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# PROPOSED AMENDMENTS TO THE FEDERAL ELECTION CAMPAIGN ACT OF 1971

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## HEARINGS

BEFORE THE

## COMMITTEE ON RULES AND ADMINISTRATION UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

### S. 59

TO AMEND THE FEDERAL ELECTION CAMPAIGN ACT OF 1971 TO LIMIT EXCESSIVE EXPENDITURES AND TO PROVIDE FOR MORE TIMELY AND COMPLETE PUBLIC REPORTING OF CAMPAIGN GIFTS AND SPENDING

### S. 1072

TO AMEND THE FEDERAL ELECTION CAMPAIGN ACT OF 1971 TO INCREASE INDIVIDUAL AND PARTY PARTICIPATION, TO PROVIDE FOR THE ADJUSTMENT OF CONTRIBUTION LIMITS, AND TO ALLOW CANDIDATES TO CONTROL EXPENDITURES MADE ON THEIR BEHALF

### S. 1563

TO AMEND THE FEDERAL ELECTION CAMPAIGN ACT OF 1971 TO PROHIBIT THE USE OF COMPULSORY UNION DUES FOR POLITICAL PURPOSES

### S. 1787

TO AMEND THE FEDERAL ELECTION CAMPAIGN ACT OF 1971 TO PROVIDE FOR THE PUBLIC FINANCING OF SENATE GENERAL ELECTION CAMPAIGNS

### S. 1806

TO AMEND THE FEDERAL ELECTION CAMPAIGN ACT OF 1971 TO CHANGE CERTAIN CONTRIBUTION LIMITS FOR CONGRESSIONAL ELECTIONS AND TO AMEND THE COMMUNICATIONS ACT OF 1934 REGARDING THE BROADCASTING OF CERTAIN MATERIAL REGARDING CANDIDATES FOR FEDERAL ELECTIVE OFFICE, AND FOR OTHER PURPOSES

### S. 1891

TO AMEND THE FEDERAL CAMPAIGN REFORM ACT

### S. 2016

TO PROVIDE FOR PUBLIC FINANCING OF FEDERAL ELECTIONS FOR THE UNITED STATES SENATE, AND FOR OTHER PURPOSES

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NOVEMBER 5, 1985; JANUARY 22, MARCH 27, 1986

Printed for the use of the Committee on Rules and Administration

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# PROPOSED AMENDMENTS TO THE FEDERAL ELECTION CAMPAIGN ACT OF 1971

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TUESDAY, NOVEMBER 5, 1985

U.S. SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
*Washington, DC.*

The committee was called to order at 9:34 a.m., Hon. Charles McC. Mathias, Jr. (chairman) presiding.

Present: Senators Mathias, Warner, Garn, Ford, Pell, Simon, and Gore.

Staff present: John B. Childers, staff director; William McW. Cochrane, minority staff director; Gerald W. Siegel, minority chief counsel; John K. Swearingen, director, technical services; Ann B. Cook, chief clerk; Peggy Parrish, professional staff member; Carole J. Blessington, assistant chief clerk; Gerald Gereau, chief investigator; Dennis G. Doherty, auditor; Beth Cady, professional staff member; Waitus A. Dowless, professional staff member; Elaine W. Milliken, elections counsel; Harriet L. Robnett, elections deputy counsel; John L. Sousa, elections counsel (minority); Jennifer J. Nelson, elections staff assistant.

## OPENING STATEMENT OF SENATOR CHARLES McC. MATHIAS, JR., CHAIRMAN, COMMITTEE ON RULES AND ADMINISTRATION

The CHAIRMAN. The Committee on Rules and Administration meets this morning to take testimony on Senate bill 1787, a bill that I have introduced, along with the Senator from Illinois, Mr. Simon, to provide for public funding of Senate general election campaigns.

I do not know that we specifically requested the bill No., 1787, but it is an appropriate one, the year in which the Constitution was written; because this bill is intended to preserve constitutional democracy in America.

There is also another appropriate coincidence, because today is election day. In States, in cities, in towns all across the country, including, incidentally, Frederick, MD, the center of historic interest, voters are going to the polls to choose State and local officials. But a year from today, even more voters will be going to the polls. They will be casting their ballots in every State of the Union for Members of the House of Representatives, and in 34 States of the Union they will be voting for Members of the U.S. Senate.

And the victors, the men and women, the Republicans and Democrats, who will make up the 100th Congress, of course we do not know who they will be; but we do know that every one of the

Representatives, every one of the Senators elected a year from today will take office under a shadow. And that is the long shadow that is cast by the powerful and growing influence of private campaign contributions on our political system.

In every decision that they make, and in every action that they take, the Members of the 100th Congress will be affected, to some degree, by the size and the source of the bankroll that helped them to attain their seats in Congress, and by the need to plan for an even larger purse to keep them there, since campaign costs are growing by geometrical progression.

This hearing today kicks off a year-long effort to stem the tide, to make sure that the 100th Congress represents the beginning of the end of this pernicious influence of dollars over democracy.

The approach of the bicentennial of the U.S. Constitution makes this a particularly fitting time to reexamine a process that is fundamental to the Democratic system of government—the process of selecting the Nation's leaders.

While I happen to believe that public financing of congressional campaigns is the most important step that Congress can take to complete the task of election reform that it began about 14 years ago, these hearings are not solely to debate the merits of campaign finance. They also give us the opportunity to revisit that old problem of money in politics. Theodore Roosevelt recognized the dangers that money in politics posed to democracy when he first proposed public financing of elections in 1907. More recently, Henry Steele Commager has warned that the problem of money in politics threatens to undermine and subvert our Democratic system.

The striking feature of elections today is the flood of campaign dollars that is unleased in each successive election cycle, just sloshing down the political streams, to the point that our colleague, Barry Goldwater, has described it as a crisis of democracy. Each passing year records new highs in campaign spending. In fact, in every election since 1980, we have surpassed the billion-dollar mark, if State and local campaigns are included. A winning Senate candidate in 1984 spent an average of $3 million, which represents a quintupling, a fivefold increase since 1976. What is the effect of these torrents of campaign dollars?

One of the things that has happened is that we have simply washed away the old familiar landmarks, we have changed the contours of American politics. The small contributor has receded into the background. Volunteerism, the people that used to carry leaflets and pamphlets around the neighborhood, are simply no longer as important in the costly media campaigns. High spending has not translated into voter interest. We do not see an enormous increase in participation as a result of it. The rate of participation of American voters remains dismally low compared to many other democracies. And television, while enormously expensive, conveys simplistic and image-based political messages. The 30-second spots are simply unable to portray, in any fair and realistic way, the complexities of the policy choices that face the Nation.

And, of course, high costs keep a great many good people out of the system. Many talented men and women choose not to enter the political arena because they simply cannot face, will not face the need to raise hundreds of thousands, or even millions, of dollars to run a campaign.

I do not think we can overlook the toll on officeholders. Something really has to be wrong with a system in which Members of the Senate are now spending about half of their 6-year term raising campaign funds. Some years ago you began raising money in the beginning of your campaign year. Now I have noticed fundraisers beginning at the end of a third year in office in the Senate.

Not only does this distract Senators from senatorial duties, but the public gets the impression that wealthy contributors have some sort of special access, special influence in Government as a result of campaign contributions.

I very well remember discussing this subject with Hubert Humphrey, and he, after all of the campaigns in which he had participated, the fundraising which he was forced to undertake, said he felt nothing in political life was so demeaning as to stand out in a frontroom, in front of the curtain, and pretend that you did not know what was happening in the backroom. And he was right. I think the process was, is and will be demeaning as long as it is condoned. It is demeaning to the politician, it is demeaning to the contributor, and, ultimately, it is demeaning to our system of Government.

I do not think we can overlook the fact that even when all of the parties to the transaction, the recipient, the candidate, the contributor, the fundraiser, the middleman, when everybody is absolutely honest, the process can be corrupting. Because there are very few politicians who fail to return the phone calls of a $1,000 contributor, or refuse to hear that contributor's side of an argument. And we only have to observe the growth, the numbers, the influence of political action committees.

Now, in spite of all this, campaign finance reform has fallen victim to political stalemate for several years.

Some place the blame on the Supreme Court for limiting the ways in which Congress can respond to excessive campaign spending. But, in spite of the Court's ruling in the case of *Buckley* v. *Valeo,* as I am sure some of the witnesses today will testify, there are still steps that Congress can take to clean up the current system.

Congress can act now, or it can wait until it faces a further crisis of confidence in the system. One thing is clear, that this problem of money in elections is not going to take care of itself under some kind of a free-market theory. Congress, at some point, has to finish the job that it began 14 years ago, and, if it does not go all the way, as Professor Commager has recommended, and simply take money out of politics, then it can do the next best thing, which is to fund the campaigns from the public treasury.

Senator Ford.

Senator **Ford**. I yield my time, Mr. Chairman.

The **Chairman**. Senator Garn.

Senator **Garn**. Just very briefly, Mr. Chairman. I certainly do not disagree at all with what you have said about the incredibly increased costs of campaigns. Campaigns are entirely too expensive. I am absolutely amazed at the amount of money that is now spent in campaigns, not only for the Senate but across the country.

I ran for mayor of Salt Lake City many years ago and had a very expensive campaign of $35,000.

The CHAIRMAN. And it was shocking to people at the time, I am sure.

Senator GARN. The one that is taking place today is in excess of $400,000 each, for a mayor's race.

I do not disagree at all that campaigns have become far too expensive. Furthermore, they are far too long. Six weeks in Britain seems to handle things very well. So, even beyond the issue of money, we spend far too much time campaigning.

Having said all of that, though, and feeling that we must find a solution to the problem that you have outlined, this Senator is overwhelmingly opposed to public financing. I do not think that is a solution to the problem. I think it could cause further problems, and certainly hurt a representative form of government. So, while I feel that we need to find some way of correcting the problem you have so ably outlined, this Senator cannot consider public financing as an answer to that serious problem.

Thank you.

The CHAIRMAN. Thank you, Senator Garn.

Senator Simon.

Senator SIMON. Thank you, Mr. Chairman.

I am pleased to be a cosponsor of this bill. Our present system of financing could hardly be worse than it is. I ended up—and I hate to even say how much I spent in the last campaign. I spent $5.3 million for primary and general election. And I was outspent by my opponent.

That is just way more money, and that is small compared to North Carolina, a State that is half the size of Illinois; both candidates spent appreciably more than either one of us did in Illinois.

My colleagues from Utah and Kentucky face this problem right now. And it is tough. You said, Mr. Chairman, you start raising campaign funds the beginning of the third year. That is, if you do not have a deficit from your last campaign.

I had a deficit from my last campaign of, well, it was $450,000, we are down to $137,000 now; we are gradually whittling it. By the time I finally get that taken care of, I am going to have to start raising money for the next campaign.

That is the reality.

It does corrupt, and let's use the right word, when you say it corrupts the process. If, tonight, and if we are not meeting—oh, I am getting tonight and tomorrow night mixed up, but let's just say tomorrow night, I am going to end up speaking in New York; get to the hotel after a couple of speaking engagements, get there at midnight, and there are 20 phone calls waiting for me. Nineteen of them from people whose names I do not recognize. The 20th I recognize as somebody who gave me a $1,000 campaign contribution. At midnight tomorrow night I am not going to make 20 phone calls. I might make one. Which one do you think I am going to make? Well, you are right. And it means that the financially articulate have an inordinate access to policymakers. And that ought to be changed.

The real needs in our society, to a great extent, are not being met simply because we are pandering to the whims of the financially articulate.

Now, there are problems that this bill does not solve. It does not deal with the independent committee problem, and I think we really have to deal with that. It does not deal with another problem, and I do not know what the answer to it is. And, Senator Garn, you are absolutely right, that the campaigns are too long. Too long for the candidate, too long for the public.

I would differ with my good friend from Utah, however, when he says he is opposed to public financing. I think the best thing we did on the Presidential race was to have that checkoff in that public financing. I would hate to go back to the old days on the Presidential races.

It is very interesting that the other countries, the other democracies of the world, almost all of them have some form of public financing. To my knowledge, there is not a single one that wants to move back to where we are. I think we have to recognize this system distorts democracy. And we have to change it.

The **CHAIRMAN**. Thank you, Senator Simon.

We have distinguished witnesses to lead this hearing today. First is the Senator from Colorado, Mr. Hart.

## TESTIMONY OF HON. GARY HART, A U.S. SENATOR FROM THE STATE OF COLORADO

Senator **HART**. Thank you, Mr. Chairman, and members of the committee.

Like Senator Ford and Senator Garn, I came to the Senate just over 10 years ago, and we all relate the issue of money in politics to our own experience. And I will just state mine very quickly.

When I sought Senate nomination and the Senate seat in Colorado in 1974, the entire race, including a contested nomination race, cost $350,000. Substantially below what my then opponent spent, but it was about a third of $1 million.

When I ran for reelection in 1980, I raised and spent just over $1 million; I think about a million one, as I recall. And, again, I was overspent by my opponent.

Last year, or the last Senate election we had in Colorado, my colleague, Bill Armstrong, ran and raised, although he did not spend, close to $3 million.

So, in the space of about a decade, the cost of running for the Senate in the State of Colorado increased by a factor of about 10. During that same period of time, the amount of money that PAC's have given increased by about the same proportion. My recollection was that in 1974 PAC's gave about $12 million.

Last year, in 1984, they gave over $100 million.

Mr. Chairman, I have submitted rather lengthy testimony, and I will not read it. I will try to summarize it very briefly.

The **CHAIRMAN**. Without objection, the full statement will be included in the record.

Senator **HART**. I thank the Chair. It contains all sorts of facts and data which your staff has. It is stunning and it is startling, when you look at the costs of campaigns. Senator Simon referred to his own race in Illinois. We all have the experience, if not our own, of colleagues or someone else who has run for statewide office and spent millions and millions and millions of dollars.

The PAC's themselves were, as we recall, a reform, an attempt to control and track and account for, in effect, corporate or special-interest money. And in that respect it was a good reform, so at the very least we have less money under the table, less of the kind of corruption that ended up bringing us Watergate—at least in part.

But, even in spite of the fact that we can now track the PAC contributions—and there are explicit, elaborate reports. I think last year when I sought the Presidency, at one time the accountant for my campaign took our quarterly report to the FEC in two briefcases, and that was just a 90-day report. But we will not go into that.

But, in spite of that, there is a direct corrupting influence from the PAC system that we presently have. I do not know whether members of the committee have had this experience, but I have talked to colleagues who say that lobbying groups now call their office and ask for an appointment to come in and lobby for a bill or against a bill or for an amendment, or some measure or other; and, at the same time, state that they will contribute to that person's campaign committee, whether an election is forthcoming or not.

I think it is getting very close to the point where not only are PAC's polluting and corrupting the atmosphere, but they are getting very deeply involved in this system of honoraria that we have. We all give speeches, and we have a limit on the amount of money that we can accept for a speech, and it is, I guess, a time-honored system of receiving some compensation for going somewhere in the country and giving a speech.

But I have had experiences in the recent past where offers have been made to give a speech and it turns out, when you get there, that you are not speaking to an audience, you are not speaking to a university or even a trade association. You are speaking to three people in a room. And you are receiving an honorarium for that.

Well, now, that line is getting very blurred. PAC's, interest groups now believe they have to pay to get in your office, and they believe they have to pay for you to listen to their arguments, whatever they are. I am talking about people all across the political and ideological spectrum. So a number of the members of the committee have commented on the phenomenon of the year-round fundraising, the perpetual fund raising that goes on. Senator Simon has commented on the fact of paying off debts, and I am painfully acquainted with that problem.

But I think Senator Garn and Senator Ford will recall that when we came here in the early or midseventies, it was thought that after you got your campaign debt paid off you had 3 or 4 years before you had to start thinking about your next reelection race, and preparing a committee and thinking about holding a fundraiser, in the year before, or 2 or 3. And we all know, in the past 10 years, of colleagues who, right after their reelection, the first thing they do is either restructure or reopen their finance committee and hold a big fundraiser. And we all know there are colleagues who are now raising money for future races 6 years in advance.

The whole strategy is to line up those PAC's, get that PAC money, get several hundred thousand dollars in the bank, intimidate your opponent so that you do not get a strong opponent. And the PAC system is now leading to this constant financing and campaign fundraising, and that, in and of itself, is becoming a political tool.

So, Mr. Chairman, in brief, I strongly support your effort for public financing. People say we cannot afford it given the deficits we have; I say we cannot afford not to, if we want clean and honest government.

What are the people of this country paying for special-interest government? For the people who argue against the cost of public financing of some kind, dollar-matching systems or whatever, what is the cost of the kind of special-interest government we're running today? It is imponderable, it is in the hundreds of billions of dollars, the way we are running our government now, what it costs the taxpayers, what it costs this country.

Whether it is a $1 checkoff system or expanding the ceiling, which Senator Boren proposes for individual contributions, which I think we should do, beyond the limitation of $1,000—where that should go, I do not know; but there is a reasonable amount—I think we have to limit PAC's as Senator Boren's bill, I think, and others seek to do; put a limit on the amount of money.

I do not particularly think it is necessary to eliminate PAC's. To the degree that they do provide a system for accounting for special-interest money, that is therapeutic. But, at the very least, there ought to be an absolute limit on the amount of money in each campaign that a candidate can accept from PAC's.

And we ought to figure out some way to limit this pyramiding. That is another thing that occurs. We do not just have an insurance PAC. We have dozens, if not hundreds of them. We do not have one real estate PAC, we have dozens and hundreds of them. Banking, communications, all the rest. They are pyramiding.

And they compound their influence by compacting all those PAC dollars together and delivering them, in effect, in bundles of hundreds of thousands of dollars.

We have to limit the costs of campaigns. I said that the cost of campaigns had gone up by a factor of 10 in the past 10 years. It amused me last year to travel the country, turn on television in some local market, and have an astute TV commentator deploring the cost of campaigns, when it was his TV station or network that was getting most of the money. We all know why campaign costs have gone up: The cost of television and radio.

Now, whether there has to be some system of a limited amount of time available for qualified candidates on television and radio, I do not know. That probably has to be the case. But, at the very least, I hope in the meantime the networks and stations will lay off us about the costs of campaigns, when they are the principal financial beneficiaries of it.

I think, Mr. Chairman, that some system has to be found, whether it is your bill or Senator Boren's bill or Senator Eagleton's bill, all of which I support, to fundamentally alter the way we go about electing public officials and end, to the degree we can, special-interest government in this country.

It is corrupting. It is influencing the way we make our decisions around here. And it should not, if we truly believe in constitutional democracy as you have said.

Finally, Mr. Chairman, I guess I am here in kind of a unique capacity. To my knowledge, I am the only candidate of one of the major parties to seek the nomination for President, and declare that I would not accept PAC money and did not accept PAC money. And I did not accept 1 cent of Political Action Committee money in 1983 or 1984, nor have I since then.

I must tell you, I have been told by close friends and financial supporters and advisers that if I were to change that policy today, if I were to accept PAC money, even for the limited purpose of paying off my campaign debts of last year—which mounted up, in large part, because I would not accept PAC money—that we could eliminate that debt in the space of months or probably even weeks, right here in Washington. Just say that, yes, for the privilege of eliminating that Presidential campaign, that you will take PAC money, and the hundreds of thousands of dollars will roll in and you will be out of debt.

Mr. Chairman, given the strong feelings I have on the matter, I am not about to do that; but it is, it seems to me, testimony to the fix that we are in.

Thank you very much.

[The prepared statement of Senator Hart follows:]

### PREPARED STATEMENT OF SENATOR GARY HART BEFORE THE SENATE COMMITTEE ON RULES AND ADMINISTRATION, NOVEMBER 5, 1985

Mr. Chairman, I appreciate the opportunity to testify today on one of the most important issues facing our nation: the corrupting influence of special interest campaign contributions. Your leadership on this and so many other issues has set a standard for all of us, and that leadership will be sorely missed in the U.S. Senate.

Mr. Chairman, I commend the courageous legislative proposals that you and Senators Boren and Eagleton have offered to reform our nation's campaign finance laws. I am proud to be a cosponsor of all three proposals.

We are here today to discuss more than changes in our election laws. Fundamentally, the issue before us is the same question Abraham Lincoln addressed 125 years ago: whether a government "of the people, by the people, and for the people" can long endure. The debate over campaign financing is a debate over our values of self-government and representative democracy.

Today, self-government and just representation are losing a battle against the disproportionate influence of contributions from political action committees, or PAC's. PAC's are growing both in number of influence, and they are growing at alarming rates.

Since 1974, the number of PAC's has grown from 600 to 4,000.

In 1974, PAC's contributed about $12 million to congressional campaigns. By last year's election, that figure had exploded to over $100, million.

PAC money is the toxic waste of American politics, and it pollutes self-government in two basic ways.

First, self-government requires that elected officials represent their constituents. Yet in the 1984 elections, 170 members of the House and Senate received more than 50% of their campaign funds from PAC's.

When PACs provide a greater share of campaign funds than voters, we can hardly be confident that the concerns of constituents will be foremost in the minds of elected officials. The principle of one-person-one-vote is inevitably diminished if special interest groups can use their funds to dictate legislative outcomes. Yet, on issue after issue, the will of the people is being thwarted by PAC contributions.

Tax reform is a perfect example. When the President announced his tax reform plan last May, many observers said the issue would wash across Washington like a populist tidal wave. Now barely five months later, many say genuine tax reform is dead in the water.

What happened? I believe PAC dollars are part of the answer:

During the first half of this year, the 56 members of the House and Senate tax-writing committees received over $10 million in campaign contributions. Almost 40 percent—nearly $4 millions—came from PACs. As the PACs have raised their voices, the popular demand for tax fairness and simplicity has been drowned out.

Even as the Ways and Means markup proceeded behind closed doors, we have seen lobbists literally blocking the halls of Congress. And as PAC money from lobbying groups flows like water, it clogs the legislative process like molasses.

Each provision of the tax code seems to have the support of a well-heeled PAC. The only group without a PAC is the average taxpayer. That's why we may never have a tax reform until we have "PACs reform".

Tax reform is not the only issue held hostage by PACs. As a member of the Senate Environment and Public Works Committee, I can tell you from personal experience that PAC influence has helped block reforms to protect the quality of our air and the health of our people.

As you may know, I had the privilege of chairing the National Commission on Air Quality. The Commission recommended several steps to improve the Clean Air Act and to curb acid rain and toxic pollutants. The Clean Air Act was supposed to be reauthorized the same year our Commission finished its work—in 1981. But now, nearly five years later, efforts to rewrite the Clean Air Act remain hopelessly deadlocked.

PAC contributions are partly responsible. Common Cause reported that, in 1980, the House and Senate environmental committees received one million PAC dollars from the seven industries most effected by the Clean Air Act.

It may be that PAC's rarely sway legislators where strong constituent preferences or personal beliefs are at stake. But there are hundreds of bills and thousands of legislative details, decided in committee, on which legislators have no strong preference. In this grey area, well-financed PACs often have the deciding voice.

The second way in which PACs undermined self-government is by undermining public respect for our nation's democratic institutions. As former Common Cause Chairman John Gardner has said, "there is nothing in our political system today that creates more distrust . . . on the part of the public than does our system of financing elections."

The signs of public distrust are clear and distressing. In the 1984 presidential race, only 59% of the nation's eligible voters went to the polls. In congressional races, voter participation has been below 50% for over 10 years.

It is easy for those of us in Congress to debate how much influence particular PAC contributions have on particular votes. But these distinctions are lost on the general public. What the public perceives is, quite bluntly, bribery.

This perception is important in its own right. Since 1907 and the Tillman Act, Federal law has proscribed not only corrupt activities, but activities that produce the *appearance* of corruption. Without question, too many PAC contributors have that appearance.

A recent book on the issue of bribery by Professor John T. Noonan Jr. suggests that most PAC contributions should fall within the legal ambit of bribery. He quotes the court opinion in a celebrated state bribery case: (quote) "No particular act need be contemplated by offeror or offeree. There is bribery if the offer is made with the intent that the offeree act favorably to the offeror when necessary." [1]

Even if the courts do not currently use this standard to judge the legitimacy of PAC contributions, the public most certainly does. The public understands that PAC contributions can make a member of the House or Senate favorably disposed toward an issue—and that is sufficient to produce widespread cynicism. As Senator Dole has said: [quote] "When these PACs give money, they expect something in return other than good government."

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[1] In a recent review of Professor Noonan's book. Robert Sherrill offers this wry observation: ". . . there is some satisfaction that can be drawn from what is going on. Politicians will tell you with the most beautifully contrived innocence that just because they vote the way . . . their lobbyist patrons want them to vote does not mean they wouldn't have voted that way anyway. At worst, this argument is no defense against the charge of bribery. At best, it is a cynical excuse reminiscent of the old jingle that used to heard on Fleet Street:

"You cannot buy or bribe or twist
"That saint, the British journalist
"But, seeing what the man will do
"Unbribed, there's no occasion to.

"And therein lies the only source of satisfaction, sourly humorous though it may be: that the special interests are in fact wasting many millions of their dollars on politicians and bureaucrats who would be just as willing to work against the public for free."

I do not mean to suggest our House or Senate colleagues are acting with venality. Nor do I believe those who operate PACs lack scruples. The majority of candidates and PACs are merely using the legal rules to their greatest benefit. That's the problem: the rules themselves are corrupt, corrupting, and scandalous. It is the rules themselves that must be changed.

Mr. Chairman, I have co-sponsored your bill, along with the amendments offered by Senators Boren and Eagleton. These proposals differ in their approaches. But whatever approach your Committee takes, campaign finance reform should have four goals:

First, it should amplify the voice of individual voters in our legislative process. The Mathias bill would finance general election candidates in congressional races with funds from individuals obtained through the tax dollar check-off system. Senator Boren's proposal amplifies the public voice by raising the ceiling for individual contributions from $1,000 to $1,500.

Second, campaign finance reform must limit the influence of PACs. Chairman Mathias' bill would achieve this goal quite simply by eliminating PAC contributions altogether in congressional general elections. Senator Boren's bill would impose aggregate limits on the dollar amounts candidates can receive from PACs. It would also lower the limit on PAC contributions from $5.000 to $3,000.

Third, campaign finance reform must diminish candidate dependence on special interest money by making campaigns more affordable. No one understands the high costs of running for office better than I do. I was the first presidential candidate to refuse all PAC contributions. My creditors can testify how difficult it is to meet today's high campaign costs relying only on contributions from individuals.

Mr. Chairman, your legislation offers the best approach to making congressional campaigns more affordable—public financing. Public financing has helped restore integrity to our presidential campaigns; we no longer hear of an individual or corporation contributing hundreds of thousands of dollars in cash as was too common in the pre-Watergate days. Ultimately, we must adopt public financing for congressional campaigns as well.

Adopting such a system will be difficult, of course. Many such proposals have been submitted and rejected over the years. I believe it would be a mistake, Mr. Chairman, to adopt an all-or-nothing attitude. There are many actions short of public financing that we can and should take in the interim. For example, I would favor immediate adoption of Senator Boren's proposal as a partial solution until we can obtain passage of your proposal for public financing.

There are other steps we should also consider to reduce campaign costs. For example, we may ultimately wish to require broadcasters to provide air time at reduced rates for "serious" candidates.

Finally, campaign finance reform must restore public confidence in our democratic institutions. We will not achieve that goal if the first concern of our colleagues is whether campaign finance reform would be of more benefit to Democrats or Republicans. We will only restore public confidence by proving that Congress has the courage and will to move beyond partisanship and self-interest and to clean-up the PAC scandal.

Mr. Chairman, even if we adopt one of these amendments, much more must be done to reform our election campaigns. We must find ways to control independent expenditures by groups running negative campaigns, and Senator Boren's bill suggests a good approach to this problem. And we must make further improvements in our method of financing presidential races.

It is time to fortify our foundation of self-government and reaffirm our faith in accurate representation. We must put the corrupting influence of special interest money behind us. We must restore the equation that Benjamin Franklin stated long ago: "In free governments, the rulers are the servants and the people their sovereigns."

The CHAIRMAN. Thank you, Senator Hart.

Are there any questions?

If not, we will ask Senator Mitchell to make his statement.

## TESTIMONY OF HON. GEORGE J. MITCHELL, A U.S. SENATOR FROM THE STATE OF MAINE

Senator MITCHELL. Good morning, Mr. Chairman, and members of the committee.

I thank you for this opportunity to testify in support of legislation to provide for public financing of Senate general election campaigns.

Mr. Chairman, I have a lengthy statement. I will excerpt portions of it and ask that the full statement be made a part of the record.

The CHAIRMAN. Without objection, the full statement will be made a part of the record.

Senator MITCHELL. Mr. Chairman, following my election to the Senate in 1982, I asked a bipartisan group of leading Maine citizens to assist me in examining the legal and institutional framework of campaign financing. The conclusions of that task force served as the basis for legislation which I introduced in the last Congress to provide for partial public financing of general elections to the Senate. I intend to reintroduce that legislation in modified form in this Congress.

When Congress writes any law, we confront the fact that our inability to predict the future course of human behavior may mean that well-intentioned laws do not work in practice as intended. Nowhere is the distance between expectations and outcome greater than with respect to the 1974 campaign finance laws.

When the Federal Election Campaign Act Amendments of 1974 were signed into law in October of that year, President Ford hailed it as landmark reform legislation which would restore public trust in the integrity of the political process.

To the degree that the law prevented the recurrence of the kind of fundraising that so marred the 1972 Presidential elections, it has succeeded. But to the degree that the act was intended to increase the role of small contributors and average citizens, in the political process, its goal has not been met.

That is not because ordinary people have no interest in political campaigns. Experience of virtually all candidates belies such a claim.

Americans are interested in public policy, and give willingly of their time and energy for candidates they support.

What has helped minimize the role of small contributors as central factors in election campaigns is the unfortunate result of the Supreme Court's decision in *Buckley* v. *Valeo*.

By holding that the Constitution prohibits any limits on expenditures by candidates, or on expenditures on behalf of candidates by independent organizations or individuals, the Supreme Court made certain that the contributions of average voters would be drowned by the immense flood of money that large organizations and wealthy individuals can use to communicate their views.

As Judge Skelly Wright has remarked, the Supreme Court, in the *Buckley* case, equated spending with speech. That complex, confusing and, in my judgment, illogical decision had as its purpose to strike down limitations on speech; but its effect has been just the opposite. It has qualified the extent of the fundamental right of freedom of expression by the quantity of money one has.

The Court's decision to preserve the right to unlimited use of funds by candidates who wish to communicate with potential voters has had the troubling result of leaving us with a political system where those with more money have greater first amendment freedom than do others.

One result of that decision has been an explosion of campaign spending that has made the American political system more and more dependent on money. That is clear from what has occurred since 1974.

In the most recent election cycle, in 1984, a total of almost $400 million in campaign contributions was made in congressional races. Contributions to congressional candidates increased almost fivefold in that 10-year period, from 1974 to 1984. Even after adjustment for inflation, the increase amounted to almost 250 percent.

The 1974 legislation, in light of the *Buckley* v. *Valeo* decision, has had the inadvertent and unintended effect of giving additional and powerful prominence to large-scale contributors and political action committees.

Individual contributions to Senate campaigns have dropped from 75 percent of total receipts in 1974 to 61 percent in the last election. Contributions of less than $100 continue to be less and less important in Senate campaigns, falling from 38 percent of total receipts to 23 percent over that 10-year period. And these trends are even more pronounced in House campaigns.

The effect of this continued increase in spending is to make our political process increasingly dependent on money. We start fund raising earlier, we employ more, newer and different techniques, and we, as Senators, are forced to invest more and more of our time in that effort.

Today, most hopeful candidates and incumbent Members of Congress must spend a disproportionate amount of time dealing with the financial aspects of campaigning. Candidates must do so to mount a respectable challenge; Members must do so to ensure their reelection.

The latter fact should be of concern to this committee, which has been studying the recommendations of the Temporary Select Committee to Study the Senate Committee System.

The report of that special committee focuses on the pressures on a Senator's time, which limit time to give full attention to the development of legislation. If one problem is the proliferation of subcommittees, a much more intrusive and time-consuming chore of Senators is participation in fund raising activities, either for ourselves or our colleagues.

In 1974, when this committee reported legislation to provide for public financing of Senate elections, it remarked that "modern campaigns are increasingly expensive and the necessary fund raising is a great drain on the time and energies of the candidate". If that was true 10 years ago, it is much more true today.

The time demands on Members of Congress are one thing; far more important is the effect the current campaign financing process has on the electorate and its faith in the system. This is where the greatest damage has been inflicted.

It is not my intention, and I do not here now impugn the integrity of the Congress itself, or of any individual Member; I do not villify political action committees, or do I not suggest that there is any individual corruption. But it would be idle for anyone to try to deny that the impression created in the minds of the American people by these huge amounts of money does in fact raise all of these questions.

And so long as the political process demands the expenditure of these enormous sums of money, every candidate, every incumbent and every challenger, will be forced to overcome this enormous burden of skepticism on the part of the American electorate.

This situation was created in large part when the *Buckley* decision eliminated key elements of the 1974 legislation. The intent of Congress in 1974 was not only to ensure full public disclosure of campaign finance sources, which is desirable, it was not only to ensure that all contributors were playing on a level field, which is desirable; by enacting limits on spending, Congress also intended the desirable result that candidates played on a level playing field in the election process itself.

The hope was that by ensuring that each candidate could spend no more than the other, the messages of both individuals could be equally amplified, equally heard, and the election determined, as closely as possible in the human system, on its merits.

The congressional intention was thwarted by the *Buckley* decision, but an alternative does exist. In its decision, the Court expressly gave Congress latitude to provide for spending limitations on Presidential campaigns within the context of public financing. And, indeed, the Senate version of the 1974 legislation did provide for public financing of congressional races.

In the final version of the bill, the public financing mechanism was limited to Presidential campaigns. The *Buckley* decision did thwart the will of Congress to control spending in congressional races, but there is no reason that the principles of public financing, that we have applied to the Presidential campaign process, should not now be made applicable to the congressional campaign process.

The legislation that is the subject of this hearing would accomplish that in a reasonable and rational way. It does not answer every question, but it would remove our dependence on more and more money by providing for full funding of Senate candidates in general election campaigns, tracking the rules already in place for Presidential general election campaigns.

Mr. Chairman and members of the committee, I conclude by saying that in my judgment, an overall spending limit is the only effective mechanism for dealing with the problem we have. And because of the unfortunate result of the *Buckley-Valeo* decision, that can only be achieved by public financing. No other mechanism will, in my judgment, be anything more than marginal tinkering with the system. The ingenuity of American lawyers, American accountants, and American politicians is unlimited. The history of the past decade makes it absolutely clear that any restriction, short of an overall campaign spending limit, will be circumvented, in ways that may not now be foreseen, but that will surely occur, just as the current system could not then and was not foreseen in 1974.

The urgency for public financing, in my judgment, lies in the fact that it is now the only constitutional mechanism by which we can achieve an overall spending limit, and because an overall spending limit is the only meaningful and effective reform of the process that we now have.

I thank you, Mr. Chairman.

[The prepared statement of Senator Mitchell follows:]

## PREPARED STATEMENT OF HON. GEORGE J. MITCHELL, A U.S. SENATOR FROM THE STATE OF MAINE

Mr. Chairman: I want to thank you for this opportunity to testify in support of legislation to provide for public financing of Senate general election campaigns.

I would also like to congratulate you for the leadership role you have played over the years in attempting to restore a sense of proportion to our campaign finance laws.

My experiences in 1981 and 1982 when I first sought election to the Senate convinced me of the need for changes in our election campaign laws.

Following the election, I asked a bipartisan group of Maine's leading citizens to assist me in examining the legal and institutional framework of campaign financing. The conclusions of that task force served as the basis for legislation which I introduced in the last Congress to provide for partial federal financing of general elections to the Senate. I intend to reintroduce that legislation in this Congress.

When Congress re-writes the laws, we always face the fact that our inability to predict the future course of human behavior may mean that well-intentioned laws do not work well in practice. But nowhere is the distance between expectations and outcome more glaring than the effects of the 1974 campaign finance reform laws.

When the Federal Election Campaign Act Amendments of 1974 were signed into law in October of 1974, President Ford hailed it as "landmark reform legislation" which would restore public trust in the integrity of the political process.

And to the degree that the law prevented the recurrence of the kind of fund-raising that so marred the 1972 Presidential elections and contributed to the entire scandal of Watergate, it has succeeded.

Cabinet officers no longer shake down corporate chiefs to obtain campaign funds. Large amounts of cash no longer flow through campaign coffers. No individual contributor can give the enormous sums which so clearly raise the question of an individual's influence over a candidate or office holder.

The reporting and disclosure provisions of the law have also helped serve the purpose of making it clear who has given money to which candidate. While those provisions could be improved to make that information available in a more timely manner to the public, disclosure has had the healthy effect that openness generally has in the public sphere—it has helped make both candidates and voters recognize that the appearance as well as the reality of improper influence must condemned.

But to the degree that the Act was intended to increase the role of small contributors and average citizens in political campaigns, its goal has not been met.

That is not because ordinary people have no interest in political campaigns. My experience and the experience of virtually all candidates belies such a claim. Americans are interested in public policy and give willingly of their time and energy for candidates they support.

What has helped prevent the emergence of grass roots campaigners as central actors in election campaigns—as I believe they should be—is the result of the Supreme Court's ruling in *Buckley* v. *Valeo*.

By holding that the Constitution prohibits any limits on expenditures by candidates, or on expenditures on behalf of candidates by independent organizations or individuals, the Court made certain that the contributions of average voters would be drowned by the immense flood of money that large organizations and wealthy individuals can use to communicate their views.

As Judge Skelly Wright has remarked, the Supreme Court in *Buckley* "equates spending with speech". Although the purpose of that complex and confusing decision was to strike down limitations on speech, its effect has been just the opposite: It has qualified the extent of the fundamental right to freedom of expression by the quantity of money one has.

The Court's decision to preserve the right to unlimited use of funds by candidates who wish to communicate with potential voters has had the troubling result of leaving us with a system where those with more money have broader first amendment freedoms than do others.

One result of that decision has been an explosion of campaign spending that has made the American political system more and more dependent on money.

That is clear from what has occurred since the 1974 legislation was enacted.

In the last election cycle, in 1984, a total of almost $400 million in campaign contributions was made. Contributions to Congressional candidates increased almost five fold from 1974 to 1984. Even after adjusting for inflation, the increase amounted to almost 250%.

The 1974 legislation, in light of the *Buckley* decision, has had the inadvertent and unintended effect of giving additional and powerful prominence to large-scale contributors and political action committees.

Individual contributions to Senate campaigns have dropped from 75 percent of total receipts in 1974 to 61 percent in the last election. Contributions of less than $100 continue to be less and less important in Senate campaigns, falling from 38 percent of total receipts to 23 percent over the ten year period since 1974. These trends are even more pronounced in House campaigns.

Over the course of the past decade, it has seemed that each election cycle takes us further into uncharted territory, with exponential increases in the cost of Congressional campaigns.

From 1978 to 1980, spending increased 23 percent. Then it increased 43 percent from 1980 to 1982. Spending in the last election was only 9 percent above 1982, primarily because the two largest states did not have Senate elections. Yet, in one state, with a voting age population of four and a half million, $27 million was raised by the two Senate candidates. In another state with a voting age population of 1.4 million, over $13 million was raised.

The effect of this continued increase in spending is to make our political process increasingly dependant on money. We start fundraising earlier, we employ newer techniques and strategies, and we are forced to invest more and more of our time in the effort.

It can be said without fear of contradiction that today, too great a proportion of the available time of members of Congress is devoted to fundraising and campaigning. And that demand on our time comes, as it must, at the expense of developing policy to guide our nation.

The overriding problem is the excessive amount of money needed to campaign for federal office and the distortions this creates when candidates have unequal opportunities to present their case to the public.

As Skelly Wright has written, "political equality is the cornerstone of American democracy" but the "political arena is less likely to serve the public interest and democratic ideals if the agenda and discussion are dominated by those with ample resources."

We are, all of us, personally aware of potentially good candidates who have been deterred from seeking elective office, not because of the personal commitment and effort that such an effort needs, but because of the tremendous burden of fundraising.

The vitality of our political system, its ability to respond to the challenges of a changing world, and its ability to survive the strains of social change—all are based on the premise of an elected legislative body that represents the different streams in our society over time.

When our system loses that flexibility and openness, when Americans of average means are virtually cut out from running for national office, when they are compelled to spend so much of their time seeking funds to make the race, our system loses one of its major strengths and an important source of legitimacy, for it will no longer be a representative system.

Today, both hopeful candidates and elected Members of Congress must spend a disproportionate amount of time dealing with the financial aspects of campaigning. Candidates must do so to mount a respectable challenge. Members do so to ensure their reelection.

The latter fact should be of concern to this committee, which has been studying the recommendations of the Temporary Select Committee to Study the Senate Committee System.

The report of that special committee focuses on the pressures on a Senator's time which limit time to give full attention to the development of legislation. If one problem is the proliferation of subcommittees, a much more intrusive and time consuming chore of Senators is participation in fundraising activities either for ourselves or our colleagues.

In 1974, when this committee reported legislation to provide for public financing of Senate elections, it remarked that "modern campaigns are increasingly expensive and the necessary fundraising is a great drain on the time and energies of the candidate". If that was the case 10 years ago, it is much more true today.

The time demands on Members of Congress are one thing; far more important is the effect the current campaign financing process has on the electorate and its faith in the system. This is where the most damage has been inflicted.

It is not my intention to impugn the integrity of Congress, to vilify political action committees or suggest that the system is corrupt.

But it would be idle to try to deny that the impression created in the minds of the people by these huge amounts of money raises all of those questions. How do we expect Americans to react when individuals spend $6 and $7 million to run for an office whose annual pay is less than $75,000?

The public cannot understand it and, frankly, unless you have been through a campaign personally and know the costs involved, it is very hard to understand.

What is left is the overwhelming impression that those who run for the Congress, who are willing to raise and spend these astronomical amounts of money, are not motivated by a belief in public service or a concern for the public welfare.

And so long as our political process demands the expenditure of these enormous sums of money, every candidate—every incumbent and every challenger—will be forced to overcome this enormous burden of skepticism on the part of the electorate.

Not only do members of the public question the motivations of those who run for electoral office, the enormous resources devoted to electoral campaigns automatically raise the most self-evident questions about the motivations of those who contribute.

Individuals and Political Action Subcommittees who play an active or major role in any campaign can expect to have their motives questioned, their integrity impugned and their actions subjected to microscopic examination.

Public disclosure and close public examination of the sources of financing for campaigns is healthy. But when obsession over the sources of funds overtakes the discussion of legitimate and competing policy positions, the public interest in electoral campaigns is shortchanged.

Americans care, as they should, who is financing the elections of public officials. But Americans also care about the policies set forth by competing candidates. When so much attention focuses on money and so little focuses on issues, one of the principle purposes of the electoral process itself is subverted.

This situation was created when the *Buckley* decision which eliminated key elements of the 1974 legislation.

The intent of Congress was not only to ensure full public disclosure of campaign finance sources, but to ensure that all contributors were playing on a level playing field. By enacting limits on spending, Congress also intended to make certain that candidates played on a level playing field in the election process itself. The hope was that by ensuring that each candidate could spend no more than the other, the messages of both individuals could be equally amplified, equally well heard, and the election determined on the merits.

That Congressional intention was thwarted by the *Buckley* decision. But an alternative does exist. In its decision, the Supreme Court expressly gave Congress latitude to provide for spending limitations on Presidential campaigns within the context of public financing. And indeed, the Senate version of the 1974 legislation provided for public funding of Congressional races.

In the final version of that bill, the public funding mechanism was limited to Presidential campaigns. The *Buckley* decision thwarted the will of Congress to control spending in Congressional races. But there is no reason that the principles of public financing that we have applied to the Presidential campaign process should not be made applicable to the Congressional campaign process.

The legislation that is the subject of this hearing would accomplish that in a reasonable and rational way. It would remove our dependance on more and more money by providing for full funding of Senate candidates in general election campaigns. This tracks the rules already in place for Presidental general election campaigns.

The bill I introduced in the last Congress provides for partial funding of general campaigns for the Senate. It creates a system of matching contributions similar to the process that now applies to primary elections for President. Consistent with the intent of the 1974 legislation to increase the role of the small contributor, my bill would limit matching funds to those contributions of $100 or less.

Candidates who wish to participate in this program of public financing would be limited to spending $500,000 plus $.15 times the voting age population. Small contributions would be matched when a participating candidate has raised at least five percent of the overall expenditure limits from small contributions within the state. A candidate would be released from the expenditure limit if his or her opponent does not participate in the public financing program.

This legislation would also respond to the problem of independent expenditures by providing for an increase in the grant of public funds to offset independent expenditures made against the candidate once they exceed five percent of the expenditure limits for the state. This program of public financing would be funded by the voluntary check-off for Senate campaigns modeled after the check-off now applicable to

Presidential campaigns. Mr. Chairman, that concludes my testimony and I would be happy to answer any questions the panel might have.

The CHAIRMAN. Thank you, Senator Mitchell.

Let me just ask you this one question, and I only ask it in light of your previous incarnation on the Federal bench.

You just said that you felt that the only way we could avoid serious problems is to put some limitation on the money. But, as you know, the Supreme Court has said that is impossible.

Now, given the fact that there is in the Constitution a specific power of the Congress, an explicit part of the Congress to regulate elections, given the fact that the Supreme Court has heretofore given its approval to some limitations on first amendment rights, power of speech—the famous and most familiar example is that there is not an unlimited right to cry "fire" in a crowded theater, because it would create a public danger—do you think we are approaching the time when there is such a public danger as a result of this sloshing of money in politics that the Court might find that this was an appropriate exception to its rule, as heretofore stated, that you could not limit the power of speech.

Senator MITCHELL. Indeed I do, Mr. Chairman, and it is my hope that the Supreme Court will be given an opportunity to review its issue, this issue, and to revise its opinion. I do not believe that any member of the Supreme Court, any more than any Member of Congress, in the mid-1970's, could possibly have foreseen the result of its decision with respect to the 1974 act. And no one can read that decision, complex, confusing as I said in my opening remarks, in my judgment, inherently illogical; indeed, Mr. Chairman, as you noted, not only has the Court imposed restrictions on speech and, by equating contributions with speech, on contributions in other circumstances, it did so in the *Buckley* v. *Valeo* decision. It upheld the $1,000 limit on individuals. It upheld the $5,000 limit on contributions by political action committees.

Inconsistently, it then said, however, that an overall limit, by distinguishing contributions from expenditures in a wholly artificial way, is unconstitutional.

I think the current system is such, the events of the past decade are so dramatically different than what existed just 10 years ago, and what no one could have foreseen, that I hope very much that the Court will have the opportunity to take a look at this issue again and perhaps conclude what I think it should have concluded in the first place, that overall spending limits, while clearly—while clearly—some infringement on first amendment rights, are, nonetheless, an acceptable, reasonable, and tolerable abridgement, much in the manner that other such abridgements have been tolerated in our society.

The CHAIRMAN. Well, I concur totally, and I thank you very much.

Any further questions?

If not, we thank you very much.

Senator SIMON. Mr. Chairman, not a question, but just an agreement. You said we can tinker but we are not really doing anything.

The question really is, Do we have the courage to face up to this thing and to have public financing? To face up to the menace this present system of financing campaigns is to our whole system of government. I concur and I applaud the Senator from Maine for his statement.

The CHAIRMAN. Thank you very much.

Senator MITCHELL. Thank you, Mr. Chairman.

Thank you, members of the committee.

The CHAIRMAN. Our next witness is Senator Boren.

## TESTIMONY OF HON. DAVID LYLE BOREN, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator BOREN. Thank you very much, Mr. Chairman, and members of the committee.

First, let me express my appreciation to you and to members of the committee for this opportunity to appear, and for the leadership which you are giving to the cause of campaign reform in this country.

It is ironic to me that we often dispatch observer teams, and I participated, as undoubtedly the chairman and members of the committee have participated in the past, as observers to elections in other countries, to make sure that the elections in those countries are held in a fair, objective, and impartial manner. And yet while we have expressed that interest in the election process in other countries, we continue to turn a blind eye to very serious problems with our own election process here at home.

Senator FORD. Senator, may I interrupt you to say that we seem to be more interested in other countries and other people than we are in our own well-being; that is not anything new.

Senator BOREN. I suppose it is not, and it is a sad commentary, and it is time that we turn attention to problems here at home, problems with our own election process. I am glad that you are doing exactly that, because that process is threatened. As one keen observer said recently, we are in danger, the way we finance elections, of substituting government of, by and for the people with government of the special interests, by the special interest groups and for the special interest groups.

I think it is absolutely critical that we take action.

After observing the past election cycle, I felt compelled to once again introduce my bill to limit the undue influence of political action committees, which have, through direct contributions and independent expenditures, helped push the cost of congressional elections at a phenomenal rate.

This kind of reform, as well as the kind of legislation proposed by the distinguished chairman of this committee, has really been before Congress for several years now. I do not need to repeat the legislative history for the members of this committee. But to those who urge us to wait another election cycle before we act, I think a look at the record might be informative.

Because the first reaction, and I am sure the chairman receives the same reaction, every time an attempt is made to reform the election process, we are told: "Oh, yes, we should do that some day, but an election is pending, let us wait until after the next election."

Of course, there is always going to be an election within 2 years of any attempt on our part to take action. We have been struggling with this subject for a long time. In 1979, the Obey-Railsback bill in the House, limiting aggregate PAC contributions a candidate could receive, passed the House but a threat of a filibuster killed the legislation in the Senate.

In the 97th Congress, Senator Robert Byrd introduced Senate bill 9, a similar version of Representative Obey's H.R. 4970; it also saw no action.

In the following Congress, Representative Mike Synar and I introduced companion bills in the House and Senate, which would again have imposed limitations. Again, it saw no action.

This January I introduced S. 297, a redraft of the previous bill dealing with political action committees; it likewise, of course, has seen no action.

On October 2 I stated on the floor of the Senate, in a letter to my colleagues, my intention to bring to a vote of the Senate this year such a proposal as an amendment to some vehicle on the Senate floor, perhaps the Compact of Free Association.

The CHAIRMAN. You mean before Christmas?

Senator BOREN. Before Christmas.

Maybe before Thanksgiving, Mr. Chairman, I hope.

The bill, which I redrafted as S. 1806, now has a broad range of support from a broad political spectrum in the Senate, as represented among the cosponsors. Among the cosponsors are Senator Hart from whom you have heard this morning, Senator Goldwater, and I have a statement from Senator Goldwater with me this morning that I would ask unanimous consent to insert in the record at the conclusion of my remarks, Senator Levin, Senator Kassebaum, Senator Rudman, Senator Stennis, Senator DeConcini, and Senator Chiles. Certainly a broad cross-section of political opinion—a bipartisan cross-section of the Senate.

The CHAIRMAN. Without objection, Senator Goldwater's statement may be inserted.

Senator BOREN. I thank the Chair.

[The prepared statement of Senator Goldwater follows:]

### PREPARED STATEMENT OF SENATOR BARRY GOLDWATER, A U.S. SENATOR FROM THE STATE OF NEVADA

Mr. Chairman, I am pleased to join the Senator from Oklahoma in proposing a bill to reduce the power of special interest groups in congressional campaigns.

The bill is directed at the primary threat now facing our system of free elections and that is the influence and power, both real and perceived, of political action committees with their selfish and narrow vision of what is good for the country.

Mr. Chairman, in the last 10 years the total number of PAC's has quadrupled, from 1,000 registered PAC's in 1976 to 4,009 PAC's in 1985. The total amount of contributions by PAC's to congressional campaigns has multiplied almost five times in the same period. Worst of all, these PAC gifts were 26 percent, over one quarter, of all moneys raised in the congressional races of 1984. This is the highest percentage that PAC funds have ever represented in history, and the total amount was well over $104 million in 1984.

Mr. Chairman, the massive involvement of PAC's in Federal elections is distorting the entire election process. It is giving elections a bad name, or a worse name than they already have.

Many people look on successful candidates as being bought and paid for by whomever gave the most money. The average voter, who cannot make a large campaign gift, feels his or her vote means nothing in deciding public policy.

As far as the public is concerned, it is the PAC's and the special interests they represent, and not the people, who set the country's political agenda and control a candidate's position on important issues. PAC money is discouraging voter turnout and ruining whatever is left of the public's perception that elected officials are what James Madison intended us to be, agents of the sovereign people, and not a front for narrow factions.

Mr. Chairman, I recognize that the bill Senator Boren and I have introduced is not the final answer. In addition to the controls on PAC's and limits on negative television advertising which are contained in the bill, I would like to set a tight ceiling on campaign spending of all kinds. I would also like to see us shorten the length of political campaigns and make election day a national holiday.

But even though it is not complete, the bill would help significantly to improve the election process. By curbing the influence of PAC's, it would help to assure that the outcome of elections will be determined by the broad public consent of the voters and not by those who give the most money.

To make representative Government work the way the framers designed it, elected officials must owe their allegiance to the people and not to the wealth of groups who speak only for selfish fringes of the whole community.

I urge the committee to adopt this proposal and help return the power over elections to the people where it belongs.

Senator **Boren**. While I respect the efforts of the committee and its chairman, trying to bring about reform through various forms of public financing, I believe that a more practical approach that could and should be accepted by a majority of the Senate is embodied in the proposal, the Campaign Finance Reform Act of 1985.

Public opinion polls indicated widespread support for a reduction of influence of political action committees. They also indicate a substantial division of opinion on the concept of public financing for congressional campaigns. Some have philosophical objections to public financing at the congressional levels, others believe that financing of campaigns should be an individual citizenship responsibility. There are also problems in defining threshold levels that candidates should reach before they qualify for public financing.

I just do not believe that we can afford to wait until a consensus is formed on the issue of public financing before we begin to take important substantial action to reform the election process.

I think we must push ahead while we wait for a resolution of some of these questions and an answer to some of these objections.

The implications of a growing tide of political action committee influence is so great today that we must focus our immediate attention on this problem, which threatens the integrity of our election process.

I could cite many frightening statistics. I think the most startling statistic is the one that comes from this last election cycle in which 163 Members elected to Congress this last year, either to the House or Senate, received over half of all of their campaign contributions from political action committees. Thirty-six percent of the House Members received over half of their campaign funds from single issue political action committees.

How can we be surprised that it becomes harder and harder to get the Congress to act to form a consensus in the public interest, when campaigns are more and more financed by special interests?

This massive influx of funds has also helped to fuel a mind-boggling increase in campaign costs, as has already been indicated.

In the last 8 years, the average campaign expenditure in winning House elections has increased 230 percent. Regrettably, in our own body, the average cost has gone from $609,000 8 years ago to over $2.9 million this last year, an increase of 385 percent.

While special interest groups are contributing more, a recently circulated report from the Democratic Study Group clearly shows a drastic decline in small contributions and by contributions by small contributors to candidates for congressional posts.

Now, in addition to those who say, "let's wait until after the next election", "let's continue to postpone actions", there are others who make different kinds of reactions to our proposals to limit the amount that candidates can receive from political action committees.

They say that we are somehow damaging an individual's right to free expression. After all, they claim, it is the individuals who fund the political action committees which are making these contributions to candidates.

To me this is one of the most phony arguments that I have ever heard. It has been the pursuit of narrow special interests which is what PAC's are for that has caused the national agenda to be clouded by efforts to help one industry or to give a tax break to one group. Clearly, even those who do contribute to political action committees do not want the kind of disjointed policymaking that they are now getting. A political action committee can only judge a candidate on how that person has voted or acted in the past on the issue of concern to that political action committee, and not on the basis of whether the total record of the public official is or is not in the national interest.

The idea that PAC's broaden political involvement is a complete myth. Recent studies have indicated that those who contribute to political action committees are far less active politically than those who make individual contributions to candidates. Usually, the real decisions about allocating political action committee money are made by a handful of lobbyists in Washington and not by PAC contributors at the grassroots.

I just mentioned the study by Dr. Frank Sorauf, professor of political science at the University of Minnesota, Study Commission for the 20 Century Fund, which examined the political knowledge and the political activities of people who make individual contributions to candidates versus those who contribute to PAC's. He concluded that those who contribute to PAC's are much less informed and less politically active than contributors to parties and to candidates, individually.

He concludes, and I quote from his study, "One of the least active forms of political activity is a contribution to a PAC as a substitute for other forms of political activity." And he says that it is well-suited to those who are very busy or to those who find politics strange, boring, or distasteful.

That is the conclusion that he reaches, after studying the political activity involvement of those who simply write a check to a PAC versus those who get politically involved with individuals or with parties.

Why should an individual delegate to a Washington-based lobby group, with a PAC, that person's political support in the form of campaign contributions? We certainly would not expect a citizen to delegate his vote to another person or group.

Let me just mention very briefly, in summary, the four or five major aspects of the legislation which I have introduced, which I hope the committee will consider as it continues its well-founded study of the subject of possible public financing of campaigns.

Let us move ahead and take positive steps now while we work to resolve the issues that surround the question of public financing.

Senate bill 1806, as revised, does the following: First, it limits to $100,000 the amount a House candidate can accept from all political action committees in each election cycle. It raises the PAC limit by $25,000 if two or more candidates qualify for the ballot in the primary in the general election. It limits Senate candidates to an amount varying with the population of their States, the low of $175,000, $200,000 if there are two or more candidates qualifying for the ballot on the primary in general election, and an overall cap, a maximum of $750,000 of PAC political contributions in the largest State.

It uses a formula of $35,000 times the number of congressional districts.

It allows for additional funding in the event of runoff elections. It lowers the limit of a contribution that can be made by a political action committee from $5,000 to $3,000. And it raises the individual limit from $1,000 to $1,500. So, instead of giving the PAC's a 5-to-1 advantage over the individual contributor, we reduce that to $3,000 compared to $1,500.

It closes the current loophole for conduit contributions through political action committees by requiring the candidate to count such contributions toward the limit for PAC's; so if a PAC bundles money, individual contributions, having already given its $5,000, and sends that to a candidate, the candidate must also count that as a contribution by the PAC. If it exceeds the $5,000 limit, in this case it would be a $3,000 limit under our legislation, it cannot be accepted.

It requires a disclaimer for PAC's that make media or material advertisements, not authorized by a candidate in a Federal election, and it would disclose that the advertisement is authorized and paid for by the committee and its presentation is not subject to any campaign law or contribution limit.

This gives notice to the public. It also allows a candidate to be provided with equal time from broadcasting stations, when such candidates are subject to advertising by so-called independent groups, either in behalf of the opposing candidate or attacking the candidate himself. It tightens the definition also, which I believe that we can do and should do, in light of the Supreme Court decisions, of what constitutes independent campaign expenditures. If you have overlapping employees between the candidate's own committee and the employees of the so-called independent group, that creates a presumption that it is not independent. If they use the same media advisers, if you can show direct communication, there are all sorts of other provisions that are set out in an attempt to tighten the definition of what is truly an independent expenditure.

Again, I want to commend the committee for the interest you are showing in this very important subject. I would simply urge that we not wait another year to take action, that we not wait until we have another election cycle. In the election cycle in 1982, only 98 Members of Congress received over half of all their contributions from political action committees.

As I mentioned, this year it was 163. If we wait another election cycle, it is going to be an even higher figure. And it is going to become increasingly difficult for us to get meaningful action, the longer we wait to tackle the important subject of campaign reform.

I appreciate very much the opportunity to appear, and again I want to commend you for the interest that you have shown, the leadership that you have shown, Mr. Chairman, in this issue.

The CHAIRMAN. Well, we thank you for your participation and the thought that you have devoted to the subject. And I do not want to delay you or delay the other witnesses who are going to follow you, but there is just one philosophical question I want to put to you.

Because, frankly, it is a question I have not been able to decide in my own mind; and in the light of your experience, you may be helpful.

It seems to me that the PAC issue is a chicken-and-egg situation. Are our campaign expenditures increasing because of PAC's or are PAC's simply nourishing the appetites of growing campaign costs?

There is no question that there are much more expensive techniques being applied to campaigns. Last year, for example, you could ask a poll question in the Imperial Valley of California at 8 o'clock in the evening and by 8 o'clock the next morning the results of that poll would be on the desk of campaign executives here in Washington. Now, that is a wonderful technique, if you can know, minute by minute, how to conduct your campaign, what questions to ask and what questions to duck; but it costs an awful lot of money.

Is that the sort of thing which is causing campaign growth or is it the PAC's themselves that are causing it?

Senator BOREN. I would say, Mr. Chairman, that it is probably both. I think there is no way that you can pump all of this additional money into congressional campaigns—millions and millions of dollars going from, I believe, $8 million to well over $100 million in just a 10-year period—and not have that money spent. We are all human. When we are in the midst of a campaign we are worried about winning, if an additional million dollars is made available to us, we are probably going to spend that million dollars, particularly in a close race, in the hope that it is going to make a difference in the outcome.

So the mere availability of the additional money that is not available through other sources makes it more likely that the costs are going to escalate, that that money is going to be spent.

It is much harder to raise money from individuals than it is from political action committees. I have never accepted political action committee financing. It has been a policy of mine, going back to my races for the State legislature in Oklahoma, then for Governor and the past two Senate elections. And I had to confront the question of how I wanted to raise money in this last election cycle. It was a difficult choice. It is a decision I discussed with my wife and key campaigners, because it made a big difference in the amount of time and effort that was going to be demanded of them. I could have had a few fundraisers, and raise substantial amounts at each one of these fundraisers. I can tell you that I was offered—without soliciting—several hundred thousand dollars—several hundred thousand dollars in PAC contributions, which I did not solicit and which I sent back.

Because I did not accept it, I had to go back to my home State. I raised over 90 percent of my contributions from my home State, all from individuals, and had 254 individual meetings at which I raised money at the grassroots in the State of Oklahoma, over a 14-month period. Now, if I had been able to accept political action contributions, I certainly would not have had to have had 254 meetings. It was much harder to raise that money. Some of those fundraisers netted $200, $300, $400.

But, I would submit, that is the way it ought to be done. It is going to make less money available for campaigns, because it is harder to raise it that way, it takes more time; but it broadens the base of political participation. And by the time I finished with those 254 meetings, I had not only raised enough to finance my campaign, at least on a moderate basis—I was still well below the average spent, nationwide—but I had also helped rebuild my political organization at the grass roots. And I would suggest that is the way the system ought to be working.

I would say it is not only the amount of money, Mr. Chairman, that is being spent in campaigns, and that does disturb me, I think we ought to confront that on several fronts, not just in the area of reducing PAC contributions, but we need to look at ways in which we can shorten campaigns, and take other actions; but the source of the money is so important. It makes such a difference to me whether or not the contribution comes from an individual who has the freedom to judge my total record. There may be an individual that belongs to a certain economic group, whether he is a banker, a lawyer, or a doctor, a member of a labor union, whatever; that individual can, at least as an individual, set aside his own special interest and look at my total record.

Maybe I support his special interest, his own professional or economic interest 50 percent of the time, or 40 percent, or 60 percent; but he can say, "I still think that is an honest man, who has integrity, who is looking out for the national interest; I am going to support him, even if he does not vote 100 percent of the time for my own economic interest."

A person who is making a decision for a political action committee, whether it is the bankers' PAC or a labor PAC, or the realtors' PAC or whatever it is, can only weigh the voting record of the actions of that official on the basis of how he or she voted on their own interest group issues.

And to me, the source of the money is perhaps even more debilitating than the amount of the money that is being spent in the campaigns and the way it is being raised. The decline of the small contributor, and the activity, the investment represented by small contributors' participation is totally different than the access buying to a Member of the Congress that is represented by a political action committee contribution.

But I think it is both. I do think money is available, money that is not otherwise going to be available. We estimate, for example, in Senate campaigns, that if the bill I proposed becomes law, it would reduce, under the ceiling, the amount of political action committee money available from approximately $28 million down to $14 million in the next election cycle. I cannot help but think that the reduction of the availability of $14 million will have a positive impact on reducing the cost of the campaigns.

The CHAIRMAN. Thank you very much, Senator.

Senator BOREN. Thank you, Mr. Chairman.

Senator FORD. Let me visit with you for just a moment about cost. Campaigning is almost like the medical profession. All of us want to use or have access to every new discovery or technique. And, particularly if our children or grandchildren are sick, we want them to have the very best. This desire to take advantage of the newest developments becomes a very personal thing in a political campaign, and I am no different from anyone else in this regard.

I can remember a Senator, who is no longer here, who took a poll 3 weeks before election that showed he was 22 points ahead. But his opposition had started the new phenomenon called tracking polls and they tracked them every day, looking for weak spots to hit. And, all of a sudden, the fellow that was 22 points ahead, lost.

Well, now others will want to try the tracking poll. That is just human nature. It is a new procedure.

Then we get into computers. I do not know about you, Senator, but I already have my computer. I realized that my mailing list was reasonably good when my mother- and father-in-law received a computerized letter from me that said, "Dear mom and dad." [Laughter.]

You know, I felt like my list was in pretty good shape. [Laughter.]

The CHAIRMAN. The computer may not have known whose mom and dad.

Senator FORD. I know, but it went to the right address.

The CHAIRMAN. That is reassuring.

Senator FORD. Yes. And he asked his daughter, my wife, should I contribute to Wendell, and she said, not yet.

The computers get us into direct mail which is where we get small contributions. Those candidates, who in the last election spent $20 million in one Senatorial race, raised that money by direct-mail solicitation. When you look at that huge amount raised, you have to consider what that direct mail cost; maybe 60 or 70 percent of that amount went to overhead costs before those small contributions went into the campaign.

Next, let's look at TV ads. Now, people look at television, maybe, 8 hours a day, 5 hours a day or 4 hours a day, whatever it might be, and you pop an interesting TV commercial into the programming, the hound dog ads, for example. That type of campaigning is expensive.

How do you begin to limit that expensive campaigning? It is new, it is innovative, and we all want to have access to new and innovative developments in campaigning.

What you propose would limit our ability to campaign. I am concerned that there will be a loophole. I do not know what it will be, but it will be found, no matter what we try to do to impose limits.

Let me ask you two quick questions.

In your original bill, you did not include a provision pertaining to bundling of contributions.

Senator BOREN. Yes.

Senator **Ford**. If that was stripped from your present bill, would you still support the legislation?

Senator **Boren**. No. I would hope, Senator Ford, and if I offer this proposal as an amendment on the floor to a pending piece of legislation, I hope to offer it in a way in which it would not be subject to amendment, in a way that we would have deleted essential portions of it.

After studying this matter further, I am convinced that not only should we put limits, but I think it is absolutely essential that we stop the use of PAC's as conduits for this bundling process that you refer to, and I think it is also essential that we tie down further the so-called independent expenditures, more carefully define them, and make them much less attractive.

Senator **Ford**. Do you consider those two items vital to your legislation?

Senator **Boren**. I think that they are absolutely vital, and they are extremely important and I would certainly want to keep them in. I do not claim that this piece of legislation solves all the problems. It is impossible. We have the soft-money problem, which I am sure the committee will also be examining very carefully, and there are other issues.

I have not tried to solve all the problems of the universe with this legislation, but what I have tried to make is a meaningful start so that we can get underway while we look at the next step that could be appropriately taken.

I would just want to comment briefly, just very briefly, you know, you mentioned a while ago the cost, the technologies available, the computer systems, the polling, the other things that we find, and new ways of more scientific ways of running campaigns every day. These cost more, just like investments in medical science. I still think that not making the money available, like needs and wants, we all have things we need, necessities in our life, and we have things we want. If we do not have the money available, we have to first take care of our needs before we can take care of our wants.

That is true in campaigns. If we reduce the availability of the money, if we cut back the millions of dollars being funneled in by PAC's, I think that will help reduce the costs, of how many of these things we can afford.

The second thing is this. Let us suppose there are things you want to do. Let us suppose there is $1 million more, that Mac Mathias or Wendell Ford or Paul Simon or David Boren would like to have to improve their computer system, their tracking polls or something else in their campaigns. Not only do I think it is undesirable that we have that additional million made available, but I think the way in which we make it available is even more important.

I just sat down and looked at that. Let us suppose we were to need $1 million in our campaign. PAC's, if we have a general election opponent, can give us $10,000. That means 100 PAC's, in theory, could respond to an emergency message for $1 million; 100 political action committees.

Now, to raise $1 million from $10 contributors would require the grassroots involvement of 10,000 citizens of our States.

I think it makes a tremendous difference, not only that we try to prohibit that additional $1 million from being spent and having the cost of campaigns go up by $1 million, I think it makes a tremendous difference whether that $1 million is raised from 100 special interest groups, judging a public official solely on their response to the interest of that narrow group, or if we raise that $1 million from 10,000 contributors at the grassroots, who are going to be politically active, according to studies that have been made, and who are really participating in the democratic process. I think that makes a tremendous difference. And I would appeal to the committee, whatever you decide to do on the question of public financing, if you cannot reach a resolution on that issue at this point in time, let us not wait any longer to try to do something to reform the process through which we are raising these vast sums of money that are now being spent on campaigns.

Let us at least tackle that problem now and get the reform process underway.

The CHAIRMAN. Thank you very much.

Senator FORD. Mr. Chairman, I might just say to my distinguished friend, I am up for reelection next year. I already have over 2,000 individual contributors, and I feel very fortunate that that will expand as we get into the campaign.

I do not know whether or not that is going to be enough. That is always the worry out there. Of course, in Oklahoma, with all those rich oil people, it does not take very long for you to get enough from individual contributions and you don't have to worry about raising the PAC's. But we have a little different situation in some other States.

I think it is fine that you can do without PAC's. But I find that some of the PAC's represent a real interest of local people and employees who get together and vote on whom they want to support; those people are part of the system. Those numbers have an interest in their PAC's activities and feel like their money means more when contributed through their PAC. Some PAC members then go into their precincts to work. Maybe those PAC's are exceptions but, basically, that is how PAC's within my own local community operate.

Senator BOREN. Fine. I think, Senator Ford, those are exceptions. I think there are situations like that, and that is the reason my proposal does not ban PAC's altogether. And where you know of such organizations and want to solicit contributions from them, and there is real participation, I think it is good to do so. But I do think the studies at the University of Minnesota point out that the usual situation is not that. It is usually the group of lobbyists here in Washington making the decision.

I just say in the footnote that the way my wheat farmers and my oilmen are doing lately, I may have to come to Kentucky to tap your tobacco farmers in my next election, but——

Senator FORD. You just continue to support the tobacco legislation, we may still want that. [Laughter.]

Senator BOREN. All I can say is that another contribution I will make to the cause of good government is if I see any other individuals out here that want to support good government, I am going to encourage them to help my colleague from Kentucky. I think that would be a wise investment in good government, as well as an investment in this legislation.

Senator FORD. You have always been an astute politician. [Laughter.]

Senator BOREN. Thank you very much, Mr. Chairman, and members of the committee.

Senator SIMON. Just one question, Mr. Chairman.

And I am sorry I had to leave for a few moments as you were beginning your testimony; I had to talk to a major contributor outside. [Laughter.]

Senator BOREN. A grass roots contributor from Illinois, no doubt.

Senator SIMON. Yes. What is your reaction to the Mathias bill?

Senator BOREN. I beg your pardon?

Senator SIMON. What is your reaction to the proposal by the senior Senator from Maryland?

Senator BOREN. I would have to say that I am frankly undecided about it. As I read some reports of it, it appears that it is still going to allow for rather high amounts of spending in some of the States, and I realize this was a sort of compromise beginning, to try to ratchet down those costs.

I have some problem with how we define when a candidate should qualify for matching funds.

For example, we still have situations in some States where even the nominees of major parties may not be substantial candidates and would have great difficulty raising, let us say, contributions from 1,000 individuals in their home States. I think it is a problem to ask the taxpayers to fund those campaigns if those candidates cannot really demonstrate basic grassroots support on their own.

And I would have to say that I have honest indecision in my own mind about whether or not we should go the public financing route. I do think that individual contributors—it has been my experience that you will probably get more activity, political activity, attending meetings, ringing doorbells, handing out leaflets, putting on bumper stickers, making phone calls—from that $5 or $10 small contributor than you will get from someone who does not make a contribution at all.

And so, as one that is concerned about intensifying involvement, knowledqe of the political process, knowledge about the candidates, involvement in the campaigns, active involvement; I would like to see whatever system we adopt, and even if it becomes public financing, I would certainly like to see it include some sort of threshold requirement, as we do in the nominating process, with the number of small contributors, a broad base, require. I would make that even smaller contributors, much smaller denominations, and more contributors in the case of congressional and Senate campaigns. I would still like to see us have a mechanism that encourages individual citizens to make that small contribution investment, because I think their interest and their involvement in the process will follow that investment.

But, again, as I say, I have mixed feelings about it. I do not want to discourage the activity at this point. I do not want to discourage this comittee from moving forward with that kind of legislative approach. I have heard the comments that you and others have made in regard to it, we do have problems with the Supreme Court decision, there is no doubt about that.

There are some who feel that this is the only way that we can proceed. I guess I still hope that we can take other actions, start the reform process, nail it down as much as we possibly can, which is what I try to do in my bill to start that process. I still hope that the Supreme Court will have another opportunity to review this matter and perhaps take a different approach.

But, in the meantime, I just do not want to see the vision that some have of the perfect solution to a problem from inhibiting us from going forward with what might be a possible and very meaningful reform in the system as an interim step right now. And I realize that those who are for public financing would view my proposal only as an interim step. Even if they want to view it in that way, I think it is an interim step that is well worth taking.

Senator SIMON. OK. Thank you.

Senator BOREN. Thank you, Mr. Chairman.

The CHAIRMAN. We will try to persuade you, but in deference to the next witnesses, I will not do it now.

Senator BOREN. Thank you very much, Mr. Chairman.

The CHAIRMAN. Our next witness is the distinguished Senator from Massachusetts, Mr. Kerry.

## TESTIMONY OF HON. JOHN F. KERRY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator KERRY. Thank you, Mr. Chairman, and distinguished members of the committee.

People have been trying to find a fair way to finance political campaigns for a long time. It is not a new issue. For most of this century, Congressmen and Senators have been struggling to find a way to get elected without either in reality or giving the appearance of being totally beholden to special interests.

As the chairman suggested in his opening comments, this effort perhaps began in most earnestness with the Tillman Act in 1907, when Teddy Roosevelt proposed that we eliminate the ability of banks and corporations to be able to have undue influence in elections; and, in fact, that act passed.

But Teddy Roosevelt, back then, recognized that that was not enough. And he told the Congress, in his annual message, that what they had done would not hamper an unscrupulous man of unlimited means from buying his way into office, and proposed what he then deemed, and I quote, "a very radical measure."

He said:

> The need for collecting large campaign funds would vanish if Congress provided an appropriation for the proper and legitimate expenses of each of the great national parties, an appropriation ample enough to meet the necessity for thorough organization and machinery, which requires a large expenditure of money.

Now, obviously, 75 years later, we are still debating this issue, and I congratulate the chairman and Senator Simon and others for putting before us the opportunity to be able to act on what I think was the wisdom of Teddy Roosevelt.

The issue of campaign financing, of how we raise money, goes to the very center of what we are as a democracy and of what we wish other people to think of us, as a democracy.

I listened carefully to the testimony of my colleague, the Senator from Oklahoma, and I agree with everything up until the point where he departed from support for the current legislation. I thought he made important points about how we can nurture the democratic process and what we can do in the raising of money to enhance people's willingness to take part in the system, to have a stake in it, to care about it, and to make it work.

But, it seems clear to me, as an observer and a practitioner, that the system that we have today diminishes people's respect for what we are supposed to be as an institution, and detracts from our ability to act independently.

I think the system is threatened today. I come before you as a Senator who did not take PAC contributions, and who can, I think, take some credit for having helped to make the Massachusetts Senate race of 1984 the first totally PAC-free Senate race in the United States. We succeeded in getting every single candidate in the race, to take the pledge not to accept PAC money.

We raised—without PAC contributions—in our State some $3 million within the space of about 10 months. It can be done. I support wholeheartedly what Senator Boren said about the increased participation of people at coffees, at teas, at gatherings where they may give $5, they may give $10. But such giving need not be through their business where they may feel a coercive pressure. It need not be channeled through a union official who runs around collecting. It may be done because they want to take the time, because some member of their community implores them to come, because they get excited and they take part.

I think that is the very best of what our process has to offer. From my perspective, PAC's detract from that.

I think we are talking about two things here. One is PAC money and the kinds of money that are in politics. The other issue is the totality, all of the money that we are spending, why it costs so much, and what we can do to restrict that.

I do not, for an instant, want to say, as I think Senator Hart did not want to say, that an individual Member of Congress is in fact corrupted, or that any Member of Congress is actually selling a vote, or that that vote is bought by virtue of PAC's. That is not the point.

But, as those who are lawyers should know, in the law, conflict of interest is not simply the existence of a conflict, it is the appearance of a conflict. And today in the United States we are giving off the appearance that the Congress of the United States is not the best Congress, necessarily, that can be elected, but the best Congress that money can buy.

I picked up an article the other day from The Wall Street Journal, October 10, 1985, the headline: "Insurance Industry Boosts Political Contributions as Congress Takes Up Cherished Tax Preferences." Reading from a paragraph:

> The money is the largest gusher in the rapidly rising flood of campaign contributions by the insurance industry, which feels threatened by proposals to lower feder-

al income tax rates by ending many existing tax preferences, including several for insurance.

Now, it is obvious, the PAC's are not giving that money in increased record amounts because they do not expect their tax preferences to be acted on more favorably. Senator Dole and countless other people in countless interviews have always said that nobody from a political action committee gives money in anticipation of getting good government in return.

I note in a subsequent paragraph, where it is being discussed in this article about whether or not the Senator knew that the money had come from this particular PAC, the PAC individual said, well we didn't send any formal cover letters with the checks, quote, "maybe we haven't gotten the most bang for the buck."

I do not think anybody in this business is going to disagree that, at minimum, access is being bought. Whether it is the telephone call that gets answered or not, I think it gives to the average citizen a perception that if you have got big bucks you can get better access and somehow the system works for you better.

And there is not one of us, I think, who is not committed to the notion that this is not what it is supposed to be all about.

Again, it is an issue of appearances, and we must deal with that issue of appearances if we are going to try to build and strengthen this structure.

I think the legislation before us addresses the concerns of Senator Boren, as I heard him articulate them. I think the Mathias-Simon bill, in the structure that it adopts from the Presidential election process, adequately meets the needs, because it addresses general elections. By not including primaries in the process, we allow for all the organizational structure and all the individual financing people want to undertake. You allow, even in this bill, for PAC's to take part on a continuous basis in the primary process. Another concern of his is about legitimatization of a nonmajor party candidate. Look around this country today; there is barely a Senate race in the United States where there are not now selected individuals by each party who are contesting the control of the U.S. Senate.

To say that somehow a party is not going to have the ability to find a major candidate in this day and age is really to ignore what is happening in terms of the process. I think there were only one or two races in the United States last election where there were not major party candidates, spontaneously. And today I read recently in one State, that the Republican Party went and said, if you run we are going to give you $1.5 million; you are financed, you are bankrolled. And the process has become that competitive.

So the question is, Can we address the issue of perception in the general election? I believe that the Mathias-Simon legislation does that, because it takes PAC's out of it, it takes the fundraising necessities out of it, and it leaves us to be able to take ideas out to the people in a more genuine fashion.

Now, I think there is one major change needed in it. I have a companion piece of legislation which I have talked with the chairman about, and it is my hope, obviously, that the Mathias-Simon bill might be able to incorporate it. One of the great reservations to the acceptance to the notion of public financing has been cost.

People always say, well, we cannot afford it; we do not want to pay that, it is going to cost us too much.

I have a proposal I would like to submit to you that will not cost us too much, that will not add financing requirements to our process, and will, in fact, reduce the deficit at the same time as we pay for Federal elections. How do you do that?

Well, Mr. Chairman, today, as you well know, we are giving a tax credit to people who contribute to campaigns; 50 percent up to $100 per individual is the current tax credit. We are losing a revenue on a biannual basis of some $530 million today. We saw $269.4 million spent in 1980, and in 1981, $262 million; in 1982, $269.8 million; and in 1983, $256.9 million. That represents money we lost to the Federal Treasury because we gave the tax credit.

If you take and add those two figures on an each year basis, it is about an average of $530 million per election cycle the Federal Government loses, to encourage people to take part in campaigns.

So, right now, we are spending more money from the Federal Government to pay for Federal elections, but we still have PAC money and we get nothing for it.

Now, my suggestion would be that we repeal that tax credit and apply that to a special fund for Senate election, and if the House chose to do so, for the House, they could. The 1984 election cycle, 2 years, all of the general elections, all of the primaries for every single Federal office in this country, cost $377 million. $377 million.

The CRS estimates that one-half of the cost is general election. So, for $98 million, the Senate general election campaign would be paid for.

For $174 million the House general election campaign could be paid for. For a total of $272 million, leaving $258 million to return to the Treasury for the reduction of the Federal deficit.

The fact is that today only 5 percent of Americans take the tax deduction that is available to them. In fact, for most people who contribute, it is not the incentive for which they contribute today.

Now, I think this financing mechanism is simple, it provides us an opportunity to say to people, we have a means of funding campaigns without raising the deficit and requiring additional expenditure.

But I really would second what Senator Boren and others have said, which is, you know, we have got to stop talking about this and really do something about it. There are not many choices. You either choose to go the public funding route, or you are going to continue to nickel-and-dime this process with some kind of restriction versus another, which one lawyer or one accountant or one campaign or one individual PAC committee or another is going to find a way to expend around it, and we are going to continue the process of trying to administer and try to regulate without the results that we are really seeking.

I think, if we had this general election process paid for, that we would make one enormous step toward reducing the current dependency on money and the feeling that we all have, that we are prisoners of that process.

Following my $2 million campaign expenditure, because I did not take PAC money, I carried a significant debt. We are still working to retire debt on a daily basis. On some days 50 percent of our time is just trying to get out of debt right now. That is not the way somebody should be spending their time in the U.S. Congress. And I would urge this committee, hopefully, to adopt this other proposal, but I strongly commend the chairman for his efforts in this regard.

Thank you, sir.

The CHAIRMAN. Thank you very much, Senator Kerry, and I appreciate the thought you put into the supplementary suggestions that you made; we will consider that very carefully.

Senator KERRY. Thank you, sir.

The CHAIRMAN. Senator Simon.

Senator SIMON. Just one very quick question. You talked about the perception of the conflict of interest and the appearance of conflict of interest. It is really more than a perception and an appearance; is it not?

Senator KERRY. I think it is. I think it is.

I think anybody who takes the time to track votes, as people who have been following the PAC issue, has, Common Cause, you read Elizabeth Drew's book; I mean, there are constant and clear delineations of votes and contributions and PAC's. I think it is more than an appearance, but at minimum it is appearance and even if it is a minimum, I am trying to just say, we have to make at the minimum some kind of response.

Senator SIMON. Thank you; I commend you.

Senator KERRY. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

We are now pleased to welcome our very distinguished colleague, Henry Reuss, who has, I suspect, conducted more campaigns than anyone in the room over the years, who has had more experience in the practical application of political principles, and who, above all other virtues, is an early supporter of the C&O Canal National Historical Park.

It is a great pleasure to have you with us.

## TESTIMONY OF HENRY S. REUSS

Mr. REUSS. Thank you very much, Mr. Chairman, and members of the committee.

Because so much that has been said very ably is contained in my rather lengthy statement. I would like, with the Chair's permission, to introduce the statement, and then proceed briefly to summarize what is on my mind.

The CHAIRMAN. Without objection, your full statement will be included in the record as if read.

Mr. REUSS. The point has been made very cogently that money increasingly dominates congressional campaigns, and it is a cause for sadness that the Republic seems constitutionally unable to defend itself against limitless campaign spending because of the Supreme Court's decision in *Buckley* v. *Valeo* in 1976, which held that the freedom of speech clause in the Bill of Rights prevents placing limits on what may be spent in an election campaign.

I suggest, as others have, that the Court mistook freedom of money for freedom of speech, and that by barring any ceiling on overall campaign spending, it created a situation in which fundraising becomes the necessary preoccupation of Members. Go any afternoon to the Democratic Club or the Republican Club on Capitol Hill, between 5 and 7, and you will see a fundraiser in progress. Both parties seem to be spending more time raising money than they do considering policy. And the *Buckley* decision virtually guarantees that these spiraling expenditures will continue to grow.

Surely, one reason why the Congress continues unable to get the budget under control, or to reform an antiquated PAC system, is because of the psychological mortgage placed on Members by excessive campaign contributions.

It cannot really be that the Founding Fathers meant that the rule of money was to determine the direction of our whole national life.

The need to raise huge sums to get and to keep office is more than just a diversion. It makes immoralists of even the highest-minded. Now the special interests are repeatedly heard to say, "Well, these contributions only buy access."

Even if it is true that that is all they bought, access is a precious thing, and it should not be for sale. The people who need access the most are precisely the people who are not able to buy it. Three hundred and forth years ago, in the Long Parliament, Major Iredell said that "the poorest in all the land still has a life to lead." That is still true, 340 years later.

What could be done about the *Buckley* decision? As you, Mr. Chairman, pointed out, constitutional decisions require frequently a weighing of interests. Clearly, it is constitutionally possible to take away somebody's freedom of speech to holler "fire" in a crowded theater; it is also happily constitutionally possible to protect against libel, though that, too, involves a technical deprivation of freedom of speech.

So I would have suggested to the Court that the right to spend unlimited money in a political campaign, in the weighing of rights, is simply not as high as the public's right to unbought elections; and that Madison Avenue is not as high a constitutional interest as Madison's principles.

So I continue to hope that one day the Supreme Court will overrule or distinguish the *Buckley* case, and permit Congress to impose reasonable limits on campaign expenditures. That is precisely what a constitutional amendment, introduced a couple of years ago in our last days in the Congress by myself and Congressman Jack Bingham of New York, and Congressperson Millicent Fenwick of New Jersey did. But a constitutional amendment takes years to put into effect, and this one certainly would. And the problem needs attention now. That is why I enthusiastically support the Mathias-Simon bill, and particularly commend its authors on the ingenious way in which they stay within the Buckley boundaries, yet manage to achieve a considerable amount of substantive good.

It uses the federally funded campaign war chest method with realistically thought out limitations, and it does one other additional thing.

If candidate A says, yes, I will take the public funding, but candidate B says, no, I will not; candidate B, then, under the bill as I understand it, would be able to spend anything he wanted to, but the Federal chest would equalize matters by giving his opponent an equal amount out of public funds. That is a good method, in my judgment, of discouraging a spend-it-all candidate from doing just that. He would not only find that he gained no advantage by it, but he would find it very poor public relations.

The Federal grant contained in your bill would also encourage people of moderate means to run for office rather than leaving the field increasingly to the very wealthy. Wealthy candidates can now dip without limit into their family treasuries to finance their races. That may be fair in a plutocracy, but it is not what should happening in a democracy.

So I commend your legislation, I hope that a similar, parallel venture will be attempted in the House of Representatives, and I wish you well.

[The prepared statement of Mr. Reuss follows:]

## PREPARED STATEMENT OF HENRY S. REUSS, BEFORE THE SENATE COMMITTEE ON RULES AND ADMINISTRATION, NOVEMBER 5, 1985

Money has increasingly became a factor in Congressional behavior. More and more, unbridled campaign spending is seen as the road to Congressional office. More and more, the energy of members of Congress is diverted from legislative duties toward raising escalating war chests.

The cost of Congressional campaigns has skyrocketed. In 1974, the average candidate for the House of Representatives in a contested race—spent $93,000. Ten years later, in 1984, the average House candidate in a contested race spent $498,000—an increase of 435%. In the average contested Senate race in 1974, candidates spent $506,000. In 1984, that figure increased by nearly 1200%—to more than $6.5 million.

Thus campaign spending has escalated. There's no end to it: You spend $3 million, I'll spend $4 million; you spend $4 million, I'll spend $5 million.

And why is the Republic unable to defend itself against limitless campaign spending? Because the Supreme Court in *Buckley* v. *Valeo*, 424 U.S. 1 (1976), held that, in the absence of a candidate's waiver by accepting government funding, Congress cannot constitutionally place limits on what may be spent in an election campaign.

I suggest that the Court mistook freedom of money for freedom of speech. By barring any ceiling on overall campaign spending, it created a situation in which fundraising has become the major preoccupation of members. Go any afternoon between 5 and 7 to the Republican Club or the Democratic Club on Capitol Hill and you'll see a fund-raiser in progress. Both parties spend far more time raising money than they do considering ideas or policy. And the *Buckley* decision virtually guarantees that these spiraling expenditures will continue to grow.

Surely one reason why Congress is demonstrating an inability to deal with major problems is the mortgage placed on members by excessive campaign contributions. Largely for fear of offending special interest groups, Congress seems unable either to bring the budget deficit under control or to reform the tax system.

You may well ask: why didn't the tax-writing committees undertake revision of our tax system twenty years ago? Why is it that the agriculture committees, despite floods of tears, do so little for the family farmer and so much for the corporate farm? Why aren't the banking committees in the forefront of reform legislation, rather than waiting for the initiatives of the lobbyists?

It can't really be that the Founding Fathers meant that the rule of money was to determine the direction of our national life.

The need to raise huge sums to get and keep office is more than just a diversion. It can make immoralists of even the highest-minded.

The special interests will be heard to say, "These contributions only buy access." But there's a gnawing fear that they involve more than access. They can influence members to adopt a friendlier view toward certain interests, or not go out of the way to antagonize them. Even if it's true that "All you're buying is access," access is a precious thing that shouldn't be for sale. "The poorest he in all the land still hath a life to lead," spoken by Major Iredell in the Long Parliament, is truer than ever today.

What can be done about the *Buckley* decision? Surely the First Amendment requires a weighing of values. The right to be protected against libel, or against the public peril caused by someone who frivolously shouts "Fire" in a crowded theater, are examples of just such a weighing. The right to spend unlimited money in a political campaign is not as high as the public's right to unbought elections; nor Madision Avenue as high as Madisons principles.

So I continue to hope that one day the Supreme Court will see fit to overrule or "distinguish" the *Buckley* case, and permit Congress to impose reasonable limits on campaign expenditures. In our last months in the House in 1982, former Representatives Jonathan Bingham of New York, Millicent Fenwick of New Jersey and I introduced a constitutional amendment to do just that.

But a constitutional amendment takes years—and the problem needs attention *now*. That's what Senators Mathias and Simon are attempting in their ingenious campaign expenditures bill. Within the limits of the *Buckley* decision, the Mathias-Simon bill manages to place a cap on campaign expenditures equal to the level of the federal funding which it provides. Although a candidate would retain the ability to opt out of public funding and spend much larger sums, the bill contains a strong disincentive to do that, by making federal funds available to that candidate's opponent to equal anything that candidate is able to raise over and above the federal grant. Thus the free-spending first candidate would find his war chest equalled and his public relations impaired, and might well decide to stay within the limits in the first place.

The federal grant contained in Mathias-Simon would also encouage people of moderate means to run for office, rather than leaving the field increasingly to millionaires. Wealthy candidates can now dip without limit into their family treasuries to finance their races. That may be fair in a plutocracy, but it's not what should happen in a democracy.

So I commend the Mathias-Simon approach, and hope that companion legislation can make its way through the House.

The CHAIRMAN. Well, I thank you very much. It is important to have the input of one who, as I said earlier, has had the kind of political experience that you have had, and who can see the change over a period of time, from your first election to the House of Representatives to the present time.

Mr. REUSS. That was a tough election, a strong incumbent opponent, and it cost almost $25,000. I did not hit that exalted figure again for many, many years. But now, in the last 10, as witness after witness has testified, it has escalated until money is the thing.

The CHAIRMAN. And just the way this rests, it is not just inflation, it is not just that things are costing more because of inflation, but 10 times the amount that it cost.

Mr. REUSS. Exactly, put in an implicit deflator, and you still have a 1,000-percent increase in real campaign expenditures.

The CHAIRMAN. So it does constitute a major problem for our system of government.

Thank you very much.

Senator Simon.

Senator SIMON. Thank you, Mr. Chairman. Let me just commend my former colleague from the House. I was a Henry Reuss fan when I was in the House, and I continue to be a Henry Reuss fan.

You used one phrase that I shall steal from you, and if I were a journalist here I would get this in a story I would write, the "psychological mortgage" on Members. That is the reality, no question about it. And I just think we have to face up to that evil that is here. And it does give, as you have pointed out, access, beyond any question, to people you feel a sense of gratitude, to people who have contributed to your campaign, you are going to give them access.

But it means that people who are unemployed, people who are desperate in our society, are not getting heard as they ought to be heard.

Once again, Henry Reuss is on the right side of things, and I feel better about our bill, Mr. Chairman, with Henry Reuss being for it.

Mr. REUSS. Thank you.

The CHAIRMAN. It does suggest an enterprise that we ought to catalog the number of days that the Congress, one House or the other, adjourns earlier than it otherwise would have, so that the Members can attend a fundraising event.

I would think that that would be a useful bit of scholarship, and I think it would be a rather shocking revelation.

Thank you very much for being here.

Mr. REUSS. Thank you.

The CHAIRMAN. Our next witnesses I am going to ask to come together to the table as a panel, Mr. Philip Stern of Washington, and Mr. Whitney North Seymour of New York.

Senator PELL. Mr. Chairman.

The CHAIRMAN. Senator Pell.

Senator PELL. I just wanted to make the point of saying how glad I am to be here when my old friend, Philip Stern, is here to testify. I have great respect for him, and for Mr. Seymour, too.

We are in the Foreign Relations Committee, I am the only Democrat on the panel there, so I have to go back very shortly.

I wanted to make this introduction.

Thank you.

The CHAIRMAN. Gentlemen, how do you wish to proceed?

## TESTIMONY OF PHILIP M. STERN, WASHINGTON, DC; AND WHITNEY NORTH SEYMOUR, JR., NEW YORK

Mr. STERN. We are the Mutt and Jeff of campaign finance reform. Mutt will proceed first, if it is agreeable with you.

I appreciate the invitation to testify, and I want to commend you, Mr. Chairman, and Senator Simon, for your leadership in tackling the unpopular cause of public finance.

In my opinion, this bill might properly be labeled, "The Candidates' Liberation Bill", for, if enacted, it would free senatorial candidates from the dependence on special-interest money that inevitably flows from having to raise ever-increasing sums for campaigns.

For more than two decades, largely as a result of my service with Senator Paul Douglas of Illinois, I have taken a keen interest in this subject. I first wrote about it in 1962 in Harper's Magazine, and in 1973 I founded the Center for Public Financing of Campaigns, which played a significant role in Congress approval of public financing of Presidential campaigns.

A cardinal virtue of this bill, S. 1787, is that it adapts the public financing provisions of existing law to senatorial campaigns. And that is a cardinal virtue for two reasons.

First, S. 1787 does not propose a radical, new, or untested approach. It merely expands a plan that is now the law of the land, has been for 10 years, and it has worked. We now no longer hear of the illegal corporate contributions or the laundering of money that occurred in 1972.

Second, S. 1787 attacks the root cause of the problem—the absence of any ceiling on campaign spending—within the confines of the Supreme Court's decision in *Buckley* v. *Valeo.* That is because the ceiling on campaign spending in Presidential general election campaigns, in return for public financing, was explicitly tested by the Supreme Court and explicitly approved in the *Buckley* decision.

The Court also specifically approved of two other restrictions required of publicly funded Presidential candidates; namely, that they take no outside contributions from PAC's and to limit the amount they individually can put into their own campaigns.

S. 1787 applies all three of those strictures to publicly funded senatorial candidates, and in that way it attacks, within the confines of Buckley, three major defects in current congressional elections, namely: First, uncontrolled campaign spending; second, the advantage accorded independently wealthy candidates; and, third, the undue influence exerted by the PAC's.

As things stand now, a Presidential general election is the only PAC-free element in our electoral system. But congressional elections need to be PAC-free, too. Increasingly, money-power is supplanting people-power; and the pace of deterioration is accelerating. With each election, the threat to representative democracy grows more acute, and the need for reform more urgent.

I have prepared several charts depicting and documenting the quickening pace of special-interest influence, and I ask that these charts, as well as a factsheet containing the underlying statistics, be included in the record of this hearing.

The CHAIRMAN. Will you give us small reproductions of the charts?

Mr. STERN. Yes, sir, I already have.

The CHAIRMAN. Then, without objection, they will be included as a part of the record.

Mr. STERN. Chart 1 shows the explosive growth of the PAC's, both in number and in the amount of money that they pour into congressional campaigns. Note particularly that in the last 4 years alone, the amount of PAC money has nearly doubled.

Chart 2 shows the root of the problem, the skyrocketing of campaign costs. In the decade, 1974–84, the cost of a contested campaign for the House of Representatives increased fivefold; and the cost of a contested senatorial campaign rose 13 times. As you can see, it multiplied about 6 times in just the last 4 years. It now costs an average of $6.5 million to run a contested campaign for the Senate.

This uncontrolled upward spiral is the root of the cause because it presents congressional candidates a Hobson's choice: either forswear public money, which, unless all candidates agree to do so, amounts to unilateral disarmament, or accept large sums of money from total strangers who do not live or vote or pay taxes in your State, but with all the obligations that entails.

The next chart, chart 3, is to my mind, the most disturbing chart of them all, because it depicts the inevitable result of increasing campaign costs: namely, that congressional dependence on PAC money has reached epidemic proportions.

A decade ago, only 28 percent of the House of Representatives depended on PAC's for more than one-third of their money; a decade later, that figure had leaped to 82 percent. Just think of it, more than four-fifths of the House Members cannot survive, or believe they cannot survive, without the PAC's. They are hooked. The PAC habit is a disease run rampant. It knows no boundaries of party or of ideology. Democrats and Republicans, liberals and conservatives, all are caught in the web of special-interest money.

To me, the greatest tragedy of all of the present system is that even the highest-minded candidate in a contested race cannot forego, for all practical purposes, PAC money.

Chart 4 strips away the pretense that PAC's are merely people who give to candidates who support their views. This chart shows that most PAC's are concerned with one thing and one thing only: That is power, and the desire to win influence with, or at the least favored access to the powerful.

When you or I allocate our giving dollars, we would not think of wasting our money on uncontested campaigns, where there is no need to wage a campaign. We certainly would not give to a candidate with whose views we disagree.

Yet the PAC's do not work that way. Chart 4 shows that in 1984 they gave nearly $6.5 million to House general election candidates, who had no opponent. That is up nearly fivefold in the past 4 years.

More disturbing still, they gave $19 million—one-fourth of all that they gave to House candidates—to incumbents who won by 70 percent or more.

Many PAC's spray their largesse across the ideological spectrum. GE's PAC, the General Electric PAC, is a case in point. Of 205 House races, where the incumbent was a candidate for reelection, the GE PAC favored the incumbent over the challenger in all but two cases; that is, 99 percent of the time.

Seventy-seven of the incumbents to whom GE gave money had approval ratings by the U.S. Chamber of Commerce of less than 10 percent, and in ten cases less than 30 percent, while they had high ratings from the ADA or the AFL-CIO—hardly candidates who would be considered "pro-business."

In the 1984 senatorial contests, the GE PAC gave to the incumbent, favored the incumbent in every single case save one, Illinois. In that case, GE gave both to the challenger and the incumbent.

Chart 5 shows that PAC influence is not confined to purely domestic issues. It also affects issues of war and peace and military spending. In the past 4 years alone, PAC giving by the top 100 defense contractors to all congressional candidates more than doubled.

More significant, and in my view more disturbing, their contributions to members of the Armed Services Committees and the Defense Appropriations Subcommittees multiplied more than four times.

Now, it would be unthinkable for a judge to accept money from a defendant or a plaintiff, or any one else with an interest in that judge's decision. But it is not unthinkable in Congress, it is done every day. The members of the defense-related committees sit as judges of how much the Pentagon may spend and for what. Yet the judges on those committees routinely accept campaign contributions from companies with an immense stake in their decisions.

The final chart, chart 6, depicts a similar phenomenon. It shows that in the first 6 months of 1985, members of the taxwriting committees, the House Ways and Means and Senate Finance Committees, received 3½ times as much PAC money as in the comparable period 2 years before. The difference between those 2 years is simple; in 1983, there was no comprehensive tax reform program before the Congress.

There is, as you have heard this morning, surely no shortage of PAC money seeking willing recipients. Senator Boren of Oklahoma has said before your committee this morning that he turned away hundreds of thousands of campaign contributions that the PAC's offered him. And Senator Hart, who also refuses PAC contributions, has told you that he understands that if he only would reverse that stand and accept PAC money, his $3 million Presidential campaign debt can be wiped out in short order.

One former Member of the Senate, Senator Hayakawa of California, has gone so far as to say, "These PAC contributions have become—let's not disguise them by their names—a huge, masked bribe."

Whether or not that is an apt characterization, the Congress suffers from the appearance of conflicts of interest and improper influence. That injures public confidence in the elected official. There is only one sure way to remedy that, and that is to banish PAC's from congressional elections, as your bill does.

I conclude my testimony by reading from a letter that the 1984 Democratic Presidential nominee, Walter Mondale wrote me on June 11, and which he has authorized me to read from here today. He says:

> When I was once nominated, and received the some $40 million in direct Federal support and was totally relieved from fundraising, I was finally my own man, able to concentrate solely on the issues and the campaign. I no longer had to give first priority to fundraising, and I could avoid the inevitable efforts to pressure my position on the issues.

That is precisely the freedom that S. 1787 would give nominees to the U.S. Senate. And the cost of providing that freedom is so low, is remarkably low, about $50 million a year.

That is about one-third of what the Pentagon spends every year on military bands.

I submit that if we can afford $143 million a year for military bands, we can surely afford $50 million to guarantee Senators who are unquestionably free of obligations to outside special interests.

Now, there is an understandable concern about adding even $50 million to the Federal deficit, but those who are thus concerned should be aware that we already have public financing of campaigns at a cost five times as great as this bill contemplates. I refer, of course, to the existing political tax credits for political contributions that deprive the United States of more than a quarter of a billion dollars a year in Federal revenues. Since a dollar uncollected adds precisely as much to the Federal deficit as a dollar directly appropriated, the political tax credit bears a price tag of a one-half a billion dollars each election cycle.

At $50 million a year, S. 1787 is a bargain.

Think what this legislation would mean: That idealistic young men and women, poor and rich alike, could come forward for public office. They could say what they believe in their hearts is good for the country, without worrying whether their position will lose or gain them political contributions.

For you sitting Senators, in S. 1787 the legislative solution is at hand to strike off the shackles of money that now bind you. If this measure became law, you would be free to do what you were elected to do: be legislators and not beggars.

You would be free to give all your time to fashioning wise national policy without the distraction of worrying about how you are going to finance your next campaign.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Stern.

Mr. SEYMOUR. Mr. Chairman, I have the honor of being the cochairman with Phil Stern of a group called Citizens Against PAC's.

My interest in getting involved in that goes to quite a different experience from the witnesses you have had earlier today, who have all testified from the vantage point of being incumbents, for whom the PAC treasuries are open wide. And I would like to share with you the opposite experience, that of being a challenger, faced with what the PAC reality is.

My interest in campaign finance reform stems directly from my experience in 1982, running as a candidate for the Republican nomination for the U.S. Senate in New York. The State committee designated me as the party's official candidate for the nomination in June of that year.

Under our direct primary law, two other candidates qualified to run against me. When the final results were in, I trailed behind my two colleagues, even with the support of most of the county committees and newspapers in the State. The reason: Insufficient funds to pay for a statewide media or direct-mail blitz. In fact, I ended up almost $200,000 in the hole. It was an expensive lesson, which I am not going to repeat.

The paramount discovery of 1982 for me was the dominant role PAC's have assumed in financing political campaigns. I last ran for elective office in the 1960's, when I served two terms in the New York State senate, and then ran for the House of Representatives in 1968. I knew how to make a pitch to contributors about political issues that might appeal to them.

In 1982, I was confronted by a totally new phenomenon: my pitch had to be made not to individual contributors, but to paid staff people, working for PAC's or for organizations like BIPAC and the U.S. Chamber of Commerce, which advise member PAC's where to put their money.

My interviews with these staff people were chilling. The PAC managers did not want to know my views on crime, welfare, jobs, housing, budget-balancing, international trade, peace, or anything else of substance. They wanted to know who was my main political consultant; who was doing my opinion polling; who was handling media and direct-mail.

Each one of these consultants would represent a minimum investment of $25,000, even in a House race. For a statewide race, the figure climbs out of sight. I did not have the money to hire the big-name consultants who were household words to these people; that is exactly why I was there, to ask for the money so I could.

By the time I answered the questions about political consultants, my PAC interviews usually ended abruptly. Sometimes a younger staff member, impressed by his own power and expertise, might make a comment like, "Forget it." One actually showed a little kindness; "Mr. Seymour," he said, "you obviously have unusual qualifications. I hate to see you wasting your time and money."

He was right. The incumbent was Daniel Patrick Moynihan. Senator Moynihan was a formidable opponent. Even before the candidate selection process began, the Senator had amassed a $2 million war chest, provided in large part from PAC's. But I believed then, and believe today, that the two-party system requires a challenger to face every incumbent, particularly when it comes to a body as important to the national welfare as the U.S. Senate.

That is why the Founding Fathers prescribed an elective rather than an appointive legislative branch of government.

The Congress is more and more an appointive body. Today, most of the Members of both Houses are appointed by PAC managers who would rather keep a friendly incumbent in office, no matter how he performs on issues, than risk making a powerful enemy by helping a challenger.

As long as the present PAC system continues, prospective congressional candidates, no matter how well qualified, should not waste their time and money challenging incumbents. Unless they are millionaires, their campaigns will never get off the ground.

This absence of challenge may be good for those already in office; but it is not good for the country.

The CHAIRMAN. Thank you both very much for some very illuminating testimony.

I must say I find some of the charts very helpful, as supplementing your own words.

There is one chart which is not exactly on point, but might be a useful addition; that would be what has happened to voter turnout these same years. I wonder what kind of comment you would have, because my perception is that voter turnout has not responded in any proportionate way to this enormously big investment over the years.

Mr. STERN. I do not have the documentable answer, and I doubt if anybody does; but I would suggest that the decrease in voter turnout is due to the increasing disillusionment of the voters with elected officials, that I referred to earlier, compounded by a feeling that it does not matter what "they," the individual voters, do; that the system is already rigidly fixed.

The most deleterious aspect of the PAC system is that the PAC money is drowning out the voice of individual voters who cannot afford to give hundreds or thousands of dollars to campaigns.

There are few smoking guns in this process, but there is an abundance of smoking statistics. The vote on the dairy price support program is one such. There are 115 Members of the House whose districts have zero milk production. Among those 115, of those who got little or no dairy PAC money, 73 percent sided with consumers in voting against a dairy price support program that would have resulted in extra costs of dairy items at the checkout counter.

Of those who got more than $1,000 from the dairy lobby, 3 percent voted with the consumers.

Mr. SEYMOUR. Mr. Chairman, although I do not have statistics, I might share one other observation about the 1982 campaign, in terms of voter response.

One of the comparisons between the sixties and the eighties in campaigning was plainly the receptivity of those who you are asking for their vote. In place of dollars, I spent a lot of time going around county fairs around my State, meeting with voters.

The CHAIRMAN. A great opportunity!

Mr. SEYMOUR. A great opportunity, but TV ads are better, in my experience. Although in the sixties, it was really uniformly an agreeable experience; in the eighties, I learned to set my teeth for the number of people who would come off, never having laid eyes on me before, and say, "You are all crooks, every politician is a crook, and the U.S. Senate is the worst."

I do not like that as a public attitude, whether I am a candidate or not. And yet I have no doubt at all that it is direct fallout of the problems of campaign finance. And you and Senator Simon are really carrying a terribly important banner here, not only for the interest of the Members of both Houses and their own peace of mind and their own attention to their duties, but really, I think, for a public confidence in public election.

The CHAIRMAN. But, then, what do you say to people who defend the present system? They say, look at what General Mills spends, look at what Kellogg's spends on advertising. The whole bundle that the political world spends is just a drop in a huge sea of advertising that is going on. It is really insignificant, and without it you cannot have a free-wheeling political debate in this country.

Mr. SEYMOUR. Are you speaking of the expenditure side or the contribution side?

The CHAIRMAN. Well, the expenditure side.

Mr. SEYMOUR. Well, I suspect that some of your witnesses earlier may have really touched on the solution there. I have no doubt at all that campaigns should take advantage of the public media, and one way to do that is obviously to help offset the broadcaster's cost by having public financing contribute to it, which your bill would do.

The other is to think of such devices as required equal time, or maybe a commitment or a dedication of a certain amount of public time to campaign presentations.

The one requirement I would make is that no candidate should appear on television in a taped pre-recorded spot, but ought to be there in full flesh to show what he or she is really made of, and not just be packaged by Madison Avenue, according to the latest poll, to give a phoney issue of the real person that is underneath.

The CHAIRMAN. Senator Simon.

Senator SIMON. Yes. Just a couple of very quick comments.

No. 1, Phil Stern, your old boss Paul Douglas would be proud of you for fighting this cause. You have never been in a more noble effort.

Mr. Seymour, I recall your efforts in behalf of the libraries, too, in addition to this good cause.

One other small statistic to add to all these others. In the last election, 3 out of 33 candidates for the U.S. Senate won, who spent less than their opponents. The money is just completely, or much too completely dominant.

Mr. Stern, you said you have to get contributions from out of State. You not only have to get contributions from out of State, if you are a candidate in Illinois you have to spend your time in Los Angeles, in Phoenix, in New York City, everywhere else, you know, when it tears your heart out, because you know you ought to be back in your home State. But you just have no choice.

The one argument that we hear again and again, when you talk about public financing, is the expense argument. It is a pure smokescreen. The expense factor is not a significant factor for anyone who votes against it in the House or Senate. That is pure smokescreen.

And, finally, Phil, you mentioned, as I recall, General Electric gave to 205 House candidates. One of the fundamental questions is, does this pay off for people? And the answer, in the case of General Electric, and they are an employer in my State and I am grateful, I was not aware of it until you mentioned it, the Senate race in Illinois is the only race where they contributed to both candidates; they probably felt it was a reasonably close contest, and they were helping both sides. And I am grateful they helped me, grateful that they employ people in Illinois.

But General Electric, for a 3-year period, made $6.5 billion net income and did not pay a penny in taxation.

Mr. STERN. In fact, they got a refund.

Senator SIMON. In fact, they got a refund. That is exactly right.

And the man or woman who cleans up this room, or cleaned up this room for those 3 years, paid more in taxes than General Electric.

Does it pay off for General Electric to make these contributions? You bet it pays off.

Do the people lose? Is it fair to that man or woman who cleans up this room? Absolutely unfair.

We simply have to be responding to needs in this Nation, and move where we ought to move. But we are not doing it with this system, and I commend the two of you for the leadership you are providing.

Mr. STERN. But the one element of public financing that I think is absolutely essential, and that is not achieved by tax credits or any other system, is the absolute assurance to a candidate that he or she will have the minimum amount necessary to mount a viable campaign without having to go to special-interest contributors.

Unless that is achieved, the temptations to accept special-interest money, particularly as Senator Boren says, when somebody comes forward and offers you $5,000 or $10,000 unsolicited, and the calculus in your mind, is the effort that is going to require to raise from small individuals. The temptation is just irresistible.

The CHAIRMAN. There is a certain relationship between these new campaign tools and everything else that goes on in modern life. It is a sort of celebrity status, that you can acquire by buying time on television.

Mr. Seymour's reference to going to county fairs recalls some of my own experiences. In visiting county fairs, I shook hands with the mother of several children, who were trailing along behind her. I introduced myself and explained why I was there. Her face brightened up and she called the children over and said—not come meet your Senator, or come meet a Member of Congress—she said, come and shake hands with the man you saw on television.

I do not know how you deal with that particular part of the problem. That is a tough one.

But regulating the ways in which people get on television, eliminating the spot ads, all would have an effect, I think. The 30-second subliminal spot ads contribute to that part of the phenomena, which is really not a healthy development, it seems to me, for our political system.

But, do you have to have a correlative effort to control sources of money and to limit demand for money?

Can you do one without the other?

Mr. Seymour. I think the law of economics takes care of it, Senator. The moment you say to a candidate,"Look, you have got this much to spend, spend it however you want to." That is when the candidate says, "Well, look, if I spend so much on television spots in these areas, and I go out to the county fairs in these other areas where it is really the only way I can reach the people, that that candidate is going to make that decision."

The Chairman. But what about independent expenditures? Does that concern you at all?

Mr. Seymour. You bet.

The Chairman. Suppose the Simon-Mathias bill is enacted into law tomorrow, will there be—would you predict, would you anticipate that ways will be found to get into huge amounts of expenditure outside the existing political system? I wonder what we should be anticipating.

Mr. Stern. My answer to that question is, as was said earlier this morning, when there is money available, it is going to find a way into the political process, and I would imagine that the answer to your question is: Yes, it will find its way into, quote, "independent expenditures."

I would have no problem, personally, with a provision, with a supplement to your bill that has been introduced, to provide dollar-for-dollar contributions to the target of the independent expenditures out of the public treasury. And there is a mechanism in your bill to effect that, without getting into the problem of the last minute blitz.

Frequent reporting requirements, as the election draws close.

The important thing is to keep the playing field level. And that would be one mechanism of doing that.

The Chairman. My own response to it would be that, yes, it may happen, but you then have to constantly adjust the law to meet new abuses. It will be a while before it happens; it takes a period of time, just as it has taken a period of time for the current phenomenon to develop.

You cannot write laws of the Medes and the Persians, you have to have the laws be flexible and responsive. We can only do so much in any one period, and then we have to expect our successors to cope with the problems which develop in their times. It seems to me that our job is very clear right now, we have to do something with the situation as it is.

Mr. SEYMOUR. I think that is very sound.

The CHAIRMAN. Do you have any further questions?

Senator SIMON. I do not. Thank you.

The CHAIRMAN. Well, we are very grateful to you. Senator Warner, do you have anything?

Senator WARNER. Except that indeed we are grateful. I have had the privilege of knowing both of these distinguished gentlemen for many years.

The CHAIRMAN. Thank you very much. And the charts will be included in the record.

Mr. STERN. Thank you.

[The prepared statement of Mr. Stern follows:]

## PREPARED STATEMENT OF PHILIP M. STERN, BEFORE THE SENATE COMMITTEE ON RULES AND ADMINISTRATION, NOVEMBER 5, 1985

Mr. Chairman and members of the Committee:

I appreciate your invitation to testify on S. 1787, a bill to finance House and Senate general elections the same way presidential general elections have been financed since 1976—out of a voluntary taxpayer checkoff fund, with no contributions from either PAC's or individuals and limiting candidates' expenditures to the amount of the public grant.

This bill might properly be called "The Candidates' Liberation Bill", for, if enacted, it would free senatorial candidates from the dependence on special-interest money that inevitably flows from having to raise ever-increasing sums to pay for campaigns.

For more than two decades, largely as a result of my service as a legislative assistant to Senator Paul H. Douglas of Illinois, I have taken a keen interest in campaign finance reform. I first wrote about this subject in 1962, in Harper's Magazine, and in 1973, I founded the Center for Public Financing of Elections, which played a significant role in Congress' approval, in 1974, of public financing of presidential elections.

S. 1787 simply adapts the public financing provisions of the 1974 law regarding Presidential general elections so as to cover Senatorial general elections. That is one of the cardinal virtues of the bill before you, for two reasons:

First, S. 1787 does not propose a radical, new, or untested approach. It merely expands a plan that is now the law of the land, has been for 10 years—and it has worked. We now hear nothing of the illegal corporate contributions or the laundering of money that occurred in 1972.

Second, S. 1787 attacks the root cause of the problem—the absence of any ceiling on Congressional campaign spending—within the confines of the Supreme Court's decision in *Buckley* v. *Valeo.* That is because the provision of the 1974 limiting total expenditures in presidential general elections to the amount of the public grant received the Court's explicit approval in the *Buckley* opinion. The Court also specifically approved of two other restrictions required of publicly funded presidential nominees: no outside contributions from PACs or individuals, and a limit on the amount candidates can contribute to their own campaigns.

S. 1787, which is modeled after existing law, would impose all three of those constitutionally-sanctioned conditions on publicly-financed senatorial candidates. Thus, if enacted, it would end three major defects in current Congressional elections: Uncontrolled campaign spending; the advantages of independently wealthy candidates; and undue influence by special-interest action committees (PACs).

As things stand, a presidential general election is the only component of our electoral system that is free of special-interest influence. But Congressional elections need to be free of that influence, too. Increasingly, money-power is supplanting people-power. And the pace of deterioration is accelerating. With each election, the threat to representative democracy grows more acute and the need for reform more urgent.

I have prepared several charts documenting the quickening growth of special-interest influence in Congressional elections. I ask that these charts be included in the record of this hearing, together with a Fact Sheet containing the underlying statistics.

### CHART 1. THE EXPLOSION OF PAC'S AND PAC MONEY

The first chart shows the explosive growth in the number of PAC's, as well as in the amounts of money they pour into Congressional elections. You will note that in just the past four years, the torrent of PAC nearly doubled.

### CHART 2. SKYROCKETING CAMPAIGN COSTS

The second chart portrays the heart of the problem: skyrocketing campaign costs. In a single decade, 1974–84, the cost of a contested House campaign grew more than five-fold. In that same decade, comparable senatorial campaign costs have risen thirteen-fold. In the past four years alone, senatorial campaigns have become six times as expensive.

This uncontrolled upward spiral in campaign costs is the core of the problem because if offers Congressional candidates a Hobson's choice: either forswear PAC money—which, unless all candidates follow suit, amounts to unilateral disarmament—or accept large sums of money from total strangers who do not live or vote in their states or districts, with all the obligations that entails.

### CHART 3. THE INCREASING OF CONGRESSIONAL DEPENDENCE ON PAC'S

The third chart depicts the inevitable result of rapidly-escalating campaign costs: Congressional dependence on PAC money has reached epidemic proportions. A decade ago, only 28 percent of House winners relied on PAC's for a third of their campaign money. Ten years later, that figure had leaped to 82 percent.

Just think of it: more than four-fifths of the House of Representatives cannot survive—or believe they cannot—without PAC money. They are "hooked". The "PAC habit" is a disease run rampant. It knows no boundaries of party or of ideology. Democrats and Republicans, liberals and conservatives—all are caught up in the web of the special interests. To me, the greatest tragedy of the present system of financing campaigns is that in contested states or districts, even the highest-minded candidates have little choice but to accept special-interest money.

### CHART 4. PAC GIVING TO SHOO-IN INCUMBENTS

The fourth chart strips away the pretense that "PAC's are people" who merely give to candidates who support their viewpoint. The chart shows that most PAC's are concerned with one thing and one thing only: power—and the desire to win influence with (or at the least preferred access to) the powerful.

When you or I allocate our giving dollars, we surely don't waste our money on the campaigns of candidates who are unopposed and hence need wage no campaign. And we certainly would not give to candidates whose philosophy differed from our own.

But as the chart shows, that's not the way the PAC's operate. They are happy to give money in abundance to incumbents who are shoo-ins for re-election—even to incumbents who have no opponent. In 1984, the PAC's gave nearly six and half million dollars to incumbent representatives who had no general-election opponent. That was more than three times what they had given to unopposed candidates just four years earlier.

That same year, PACs gave $19.1 million—one-fourth of their total given— to incumbents who won by 70 percent or more.

Many PAC's spray their largess across the ideological spectrum. General Electric's PAC is a case in point. Of 205 House races where the incumbent was seeking re-election in 1984, the GE PAC favored the incumbent over the challenger in all but two cases—that is, 99 percent of the time. 77 incumbents to whom GS sent money had less than a 40 percent approval rating from the U.S. Chamber of Commerce, and 10 rated less than 30 percent, while scoring high with Americans for Democratic Action and the AFL-CIO.

In the 1984 senatorial contests, the GE PAC preferred the incumbent over the challenger in every single case except one (Illinois). In that case, the GE PAC gave both to the incumbent and the challenger.

In Congress as a whole, an ever-increasing proportion of PAC contributions go to incumbents. In 1984, PAC's gave 73 percent of their money to those in office—a jump of ten percentage points in just four years.

### CHART 5. PAC GIFTS BY DEFENSE CONTRACTORS ARE UP SHARPLY

The fifth chart shows that PAC influence is not confined to purely domestic issues. It also affects issues of war and peace and military spending. In the past four years, PAC giving by the top 100 defense contractors to all Congressional candidates more than doubled. More significant, their contributions to members of the Armed Services Committees and the Defense Appropriations Subcommittee nearly quadrupled.

Now it would be unthinkable for a judge to accept money from a defendant or plaintiff, or any other party with a stake in that judge's decisions. But it's not unthinkable with Congressmen and Senators. They do it every day. The members of the defense-related committees sit as judges of how much the Pentagon may spend and for what. Yet the "judges" on those committees routinely accept campaign contributions from companies with an immense stake in their decisions.

### CHART 6. PAC GIFTS TO TAX-WRITING COMMITTEES TRIPLED IN 2 YEARS

The final chart depicts a similar phenomenon: in the first six months of 1985, members of the tax-writing committees of Congress (the House Ways and Means and the Senate Finance Committees) received three and a half times as much PAC money as in the comparable period two years earlier. The difference between 1983 and 1985 is simple: in 1983, there was no major tax reform program before the Congress.

There is surely no shortage of PAC money seeking willing recipients. Senator Boren of Oklahoma, one of the few senators who decline to take PAC money, has said he turned aside $400,000 of preferred PAC contributions during his 1984 election campaign. And Senator Hart, who also refuses PAC contributions, has said he has been given to understand that if he will only reverse that stance and accept PAC money, his entire $3 million presidential campaign debt could be wiped out in short order.

One former member of the Senate, Senator Hayakawa of California, has gone so far as to say, "These (PAC) contributions have become—let's not disguise them by their names—a huge, masked bribe."

Whether or not that is an apt characterization, the Congress suffers from the appearance of conflicts of interest and of improper influence. That injures public confidence in elected officials. There is only one sure way to remedy that: banish special interest PACs from Congressional elections, as S. 1787 would do in general elections to the House and Senate.

I conclude my testimony by reading from a letter that Walter Mondale, the 1984 Democratic presidential nominee, wrote me on June 11, which he has authorized me to read here today:

"When I was once nominated, and received the some $40 million in direct federal support and was totally relieved from fundraising, I was finally my own man, able to concentrate solely on the issues and the campaign. I no longer had to give first priority to fundraising, and I could avoid the inevitable efforts to pressure my opposition on the issues."

That is precisely the freedom that S. 1787 would offer nominees to the United States Senate.

The cost providing that freedom is remarkably low. The public grants to senatorial nominees contemplated under S. 1787's formula would total about $50 million a year.

That is about one-third what the Pentagon spends every year for military bands!

I submit that if we can afford $143 million for military bands, surely we can afford $50 million to assure a United States Senate is unquestionably free of obligations to special interest groups headquartered outside their states.

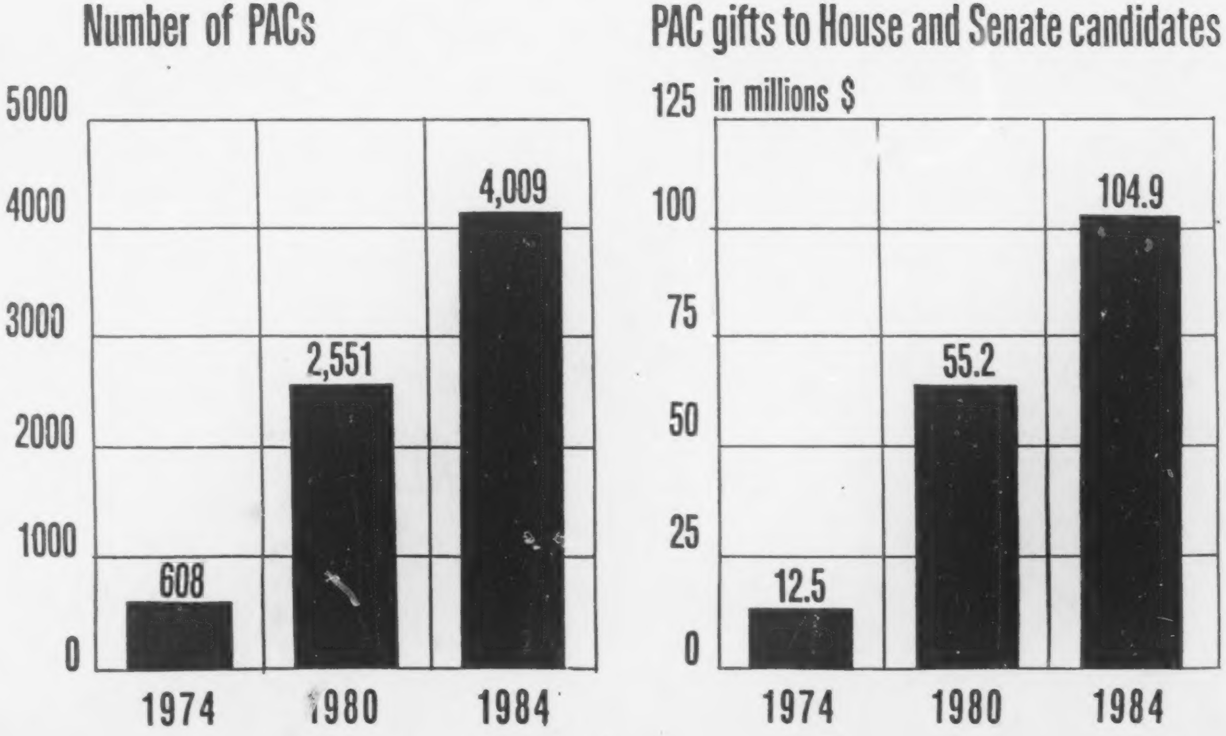
Those who are, understandably, concerned about adding even a little to the Federal deficit should be aware that current law already provides for public financing of elections at a cost five times that of S. 1787. I refer to the existing tax credits for political contributions, a provision that currently deprives the U.S. of more than a quarter of a *billion* dollars a year in revenues that would otherwise be collected. Since a dollar uncollected adds precisely as much to the federal deficit as a dollar directly appropriated, the political tax credit bears a price tax of half a billion dollars for each election cycle.

At $50 million a year, S. 1787 is a bargain.

That what this legislation would mean: That idealistic young men and women—poor and rich alike—could come forward for public office. They could say what they believe in their hearts is good for our country, without worrying whether their position will lose or gain them campaign contributions.

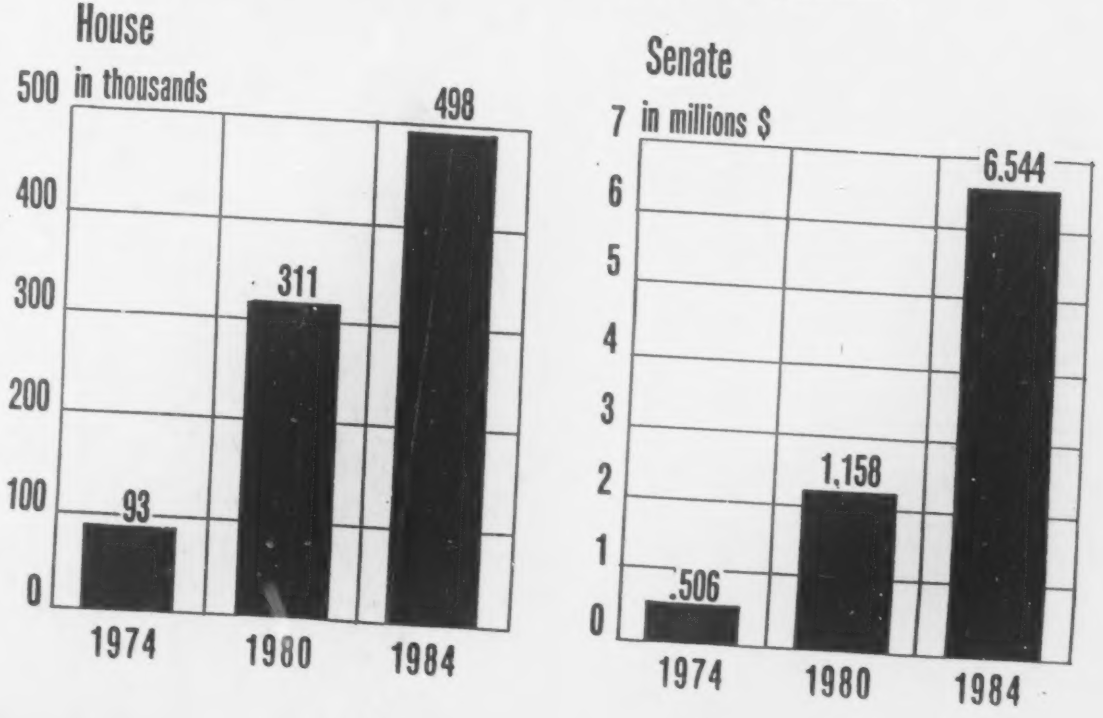
For you senators, in S. 1787 the legislative solution is at hand to strike off the shackles of money that now bind you. If this measure became law, you would be free to do what you were elected to do: be legislators, not beggars. You'd be free to give all your time and attention to fashioning wise national policy, without the distraction of worrying about how you are going to finance your next campaign.

# PACs and PAC money are mushrooming



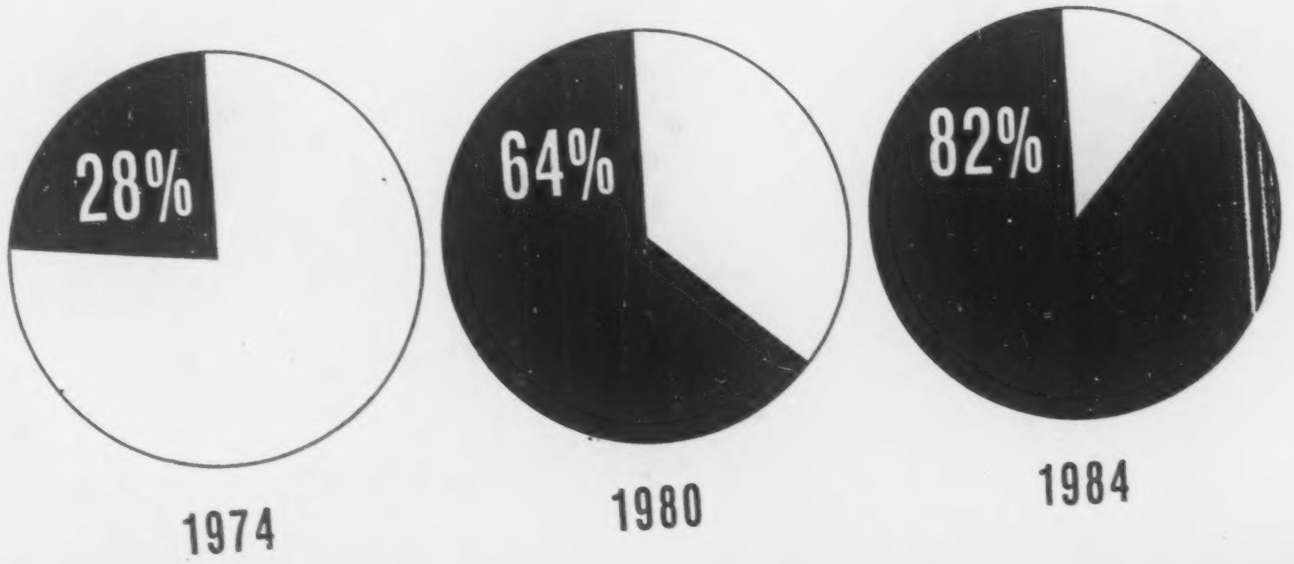
## Campaign costs are skyrocketing

Average spent by winner in contested race (Winner won by 55% or less )



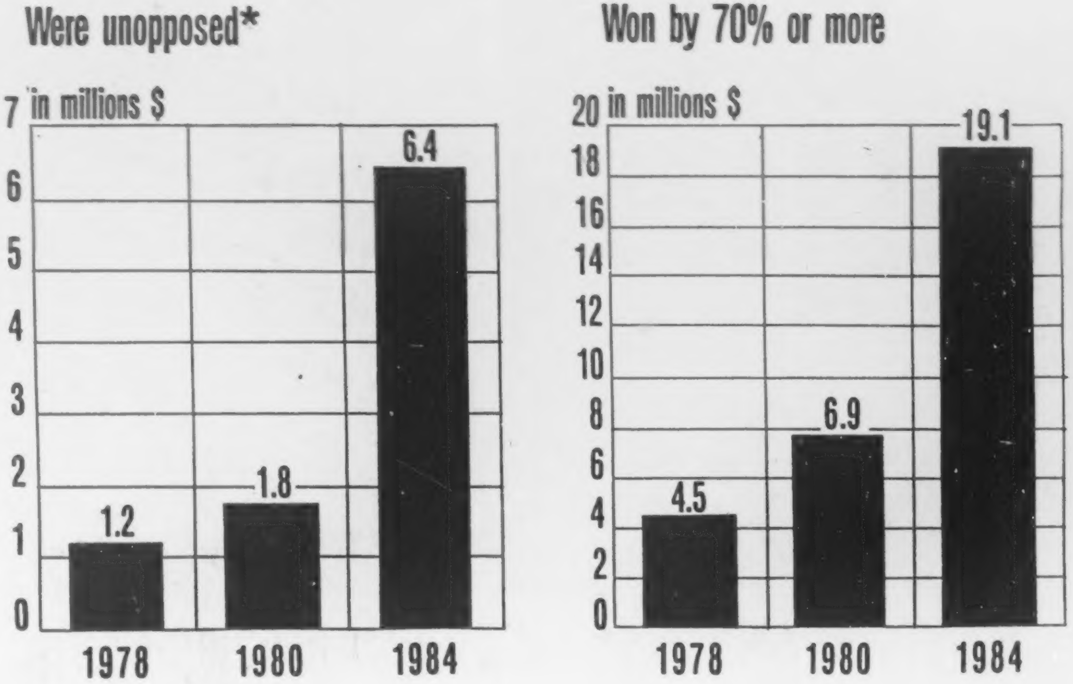
# Candidates are increasingly dependent on PAC money

% of House winners dependent on PACs for more than 30% of their campaign funds



# PACs give increasingly to shoo-in incumbents

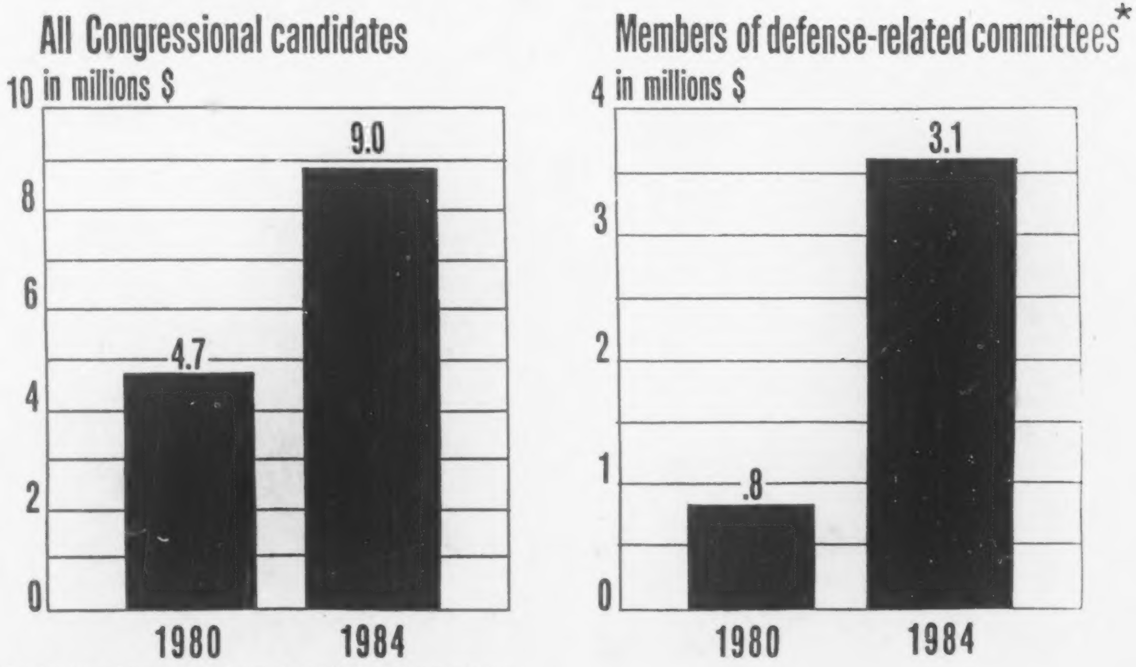
PAC gifts to House incumbents who—



major-party opponent in the general election.

# PAC gifts by defense contractors up sharply since 1980

Gifts by top 100 top defense contractors to —



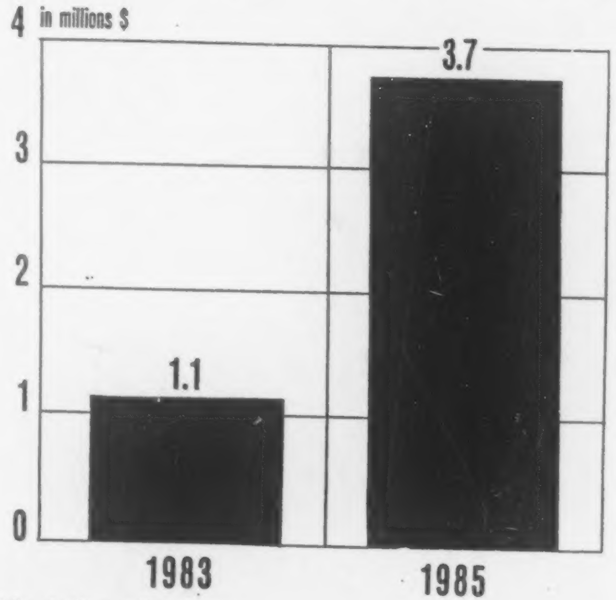
All Congressional candidates

Members of defense-related committees*

*Armed Service Committees and Defense Appropriations subcommittees.

# PAC gifts to tax-writing committees* tripled in two years

PAC contributions during first six months of 1983, 1985



*House Ways and Means and Senate Finance Committees.

## APPENDIX A.—PACT SHEET POLITICAL ACTION COMMITTEES (PACS) AND THE U.S. CONGRESS

1. *PACs and PAC money are mushrooming: PAC contributions have nearly doubled in the past four years:*

[Dollar amounts in millions]

| Year | Number of PACs | PAC contributions to House and Senate candidates |
|---|---|---|
| 1974 | 608 | $12.5 |
| 1980 | 2,551 | 55.2 |
| 1984 | 4,009 | 104.9 |

2. *Cost of congressional campaigns are skyrocketing:*

| Year | Average spending by winner in contested race (Winner won by 55 percent or less) | |
|---|---|---|
| | House | Senate |
| 1974 | $93,070 | $506,000 |
| 1980 | 310,990 | 1,158,050 |
| 1984 | 498,177 | 6,543,694 |

3. *Candidates are increasingly dependent on PAC money:*

| Year | Percent of House winners who depended on PACs For:— | |
|---|---|---|
| | Over 30 percent of their campaign funds | Over half of their campaign funds |
| 1974 | 28 | 9 |
| 1980 | 64 | 24 |
| 1984 | 82 | 37 |

4. *PAC's increasingly favor incumbents over challengers:*

*Percent of PAC gifts made to House and Senate incumbents*

| Year: | |
|---|---|
| 1974 | 58 |
| 1980 | 63 |
| 1984 | 73 |

5. *PACs give increasingly to shoo-in incumbents:*

| Year | Amount of PAC contributions made to house incumbents who— | | |
|---|---|---|---|
| | Were unopposed [1] | Won by 80 percent plus | Won by 70 percent plus |
| 1978 | $1,227,309 | $2,067,170 | $4,465,227 |
| 1980 | 1,760,593 | 2,789,612 | 7,971,709 |
| 1984 | 6,431,961 | 8,863,971 | 19,121,844 |

[1] No major-party opponent in the general election.

6. *Post-election warchests from unused campaign funds have more than doubled in four years.*

Average Post-Election Leftover Campaign Funds of House Incumbents in: 1980, $36,314; 1984, $87,577 (up 141 percent).

Number of House Winners with Unused Campaign Funds in Excess of:

| | $100,000 | $200,000 | $300,000 | $400,000 | $500,000 |
|---|---|---|---|---|---|
| 1980 | 23 | 5 | 2 | 0 | 0 |
| 1984 | 70 | 49 | 24 | 9 | 4 |

Note: Representatives elected prior to 1980 may legally transfer campaign surpluses to their own bank accounts when they retire from Congress.

7. *PAC gifts by top defense contractors have nearly doubled in four years; gifts to defense-related committee members nearly quadrupled:*

| | Contributions by the Top 100 defense industry PAC's to— | |
|---|---|---|
| | All candidates for House and Senate | Members of the Armed Services Committees and Defense Appropriations Subcommittees |
| 1980 | $4,692,464 | $809,273 |
| 1984 | [1] 8,983,219 | [2] 3,126,808 |

[1] Up 91 percent.

[2] Up 286 percent.

8. *PAC gifts to members of tax-writing committees were three times as large in 1985 as in 1983 (when no major tax reform was pending):*

PAC Gifts to members of Senate Finance and House Ways and Means Committees in the first 6 months of: 1983, $1,167,988; 1985, 3,736,054.

9. *Contributions from most leading PAC's are up sharply since 1980:*

[In thousands]

| Top 5 PAC's (for 1984) | Contributions to congressional candidates | | |
|---|---|---|---|
| | 1979–80 | 1983–4 | change |
| Realtors | $1,528 | $2,419 | +58 |
| AMPAC (AMA) | 1,349 | 1,839 | +36 |
| Builders | 368 | 1,604 | +335 |
| Nat'l. Education Association | 276 | 1,565 | +467 |
| United Auto Workers | 1,411 | 1,396 | −1 |

The CHAIRMAN. Our next witnesses I will again ask to come to the witness table together, so that they can testify as a panel.

Dr. Amitai Etzioni of George Washington University, Prof. Jeffrey Blum of the State University of New York at Buffalo, and Mr. Burton D. Sheppard of Washington, DC.

Will the staff provide another chair?

Gentlemen, if you could make room for Mr. Sheppard to join you there.

Dr. Etzioni, do you want to start first?

## TESTIMONY OF DR. AMITAI ETZIONI, GEORGE WASHINGTON UNIVERSITY; PROF. JEFFREY M. BLUM, STATE UNIVERSITY OF NEW YORK AT BUFFALO; AND BURTON D. SHEPPARD, ESQ., WASHINGTON, DC

Dr. ETZIONI. Thank you very much, Mr. Chairman.

Mr. Chairman, Senator Simon, with your permission, I will submit my statement for the record, and just make a few remarks.

The CHAIRMAN. It will be included in full in the record.

Dr. ETZIONI. Thank you.

I would like, first, to congratulate you and the committee on this very important bill. I think it will go a very long way to correct a major drift toward plutocracy, which we have been experiencing in the last year or so.

Let me take a moment to put it in the historical context there, as I see it, and I will go a little further back than 1907.

In the medieval society we had a notion that if you were on top of the hierarchy in one sense, then that gave you the privilege to dominate the society in all other manners. So if you were a Lord in the social sense, then you were also entitled to affluence and you were entitled to a special political seat; and if you were a slave or a serf, you would be out of it in all manners.

Indeed, it was reflected in the legal system, that if a free man slayed a slave, he would be fined 50 coins, whatever the current coin of the monarchy; but if a slave slayed a free man, he would be hanged.

Now, over the centuries, democracy has arisen by the notion that statuses in society and your affluence will not determine your political standing, and that one person/one vote catches the idea that whatever differences we may have in the body society, in the political system we are all equal.

It did not come immediately to us, even in this country, we all had once the notion that voting was limited to white males, and only those who owned a certain amount of acres. And again, the progress of American democracy has been to drop the property prerequisite for running for office or for the right to vote, and extending it gradually to all citizens, women, minorities, and such.

But what has happened in the last year, is that the process has, in fact, become worse, and we are back to the situation that the wealthier you are, the greater your political influence. In effect, we are returning to a situation where we have a property-weighted poll.

What your bill would do, to very large measure, is to restore the separation of status, so that your wealth and your social status will not carry into the political system.

Several people that testified before me emphasized the poor, because they have no PAC and therefore they do not care; they cannot influence the system. Senator Dole was another one who pointed that out.

That is, of course, a well-taken point, but there are more and more members of our society who do not care about the poor.

I would like to speak to those persons for a moment, to suggest that it is not that the other ones are finding their due proportional representation in the existing system; it is not simply that the poor are left out. It means now that those who are better heeled get extra points, compared to those who are somewhat less fortunate. So the social workers do less well than the teachers, and the teachers do less well than the real estate people, and the real estate people do less well than some of the big bankers.

So what we have created is a new weighing system, where, as dear as the poor are to us, all groups are carrying weight in proportion to their campaign contribution. It is not just a question of election, a lot of emphasis today was put on election, and yes, it is half the story, if you can elect a Senator or Representative who is going to be committed to your particular interest, you, in effect, bought good political future legislation on a wholesale basis.

But there is a lot of retail going on. People lose sight of the fact that most votes in Congress take place out of sight. The media covers major votes on issues of dramatic interest, deficits, abortions, and such; but there are thousands of occasions in a year that votes take place. I would hazard a guess, and I am drawing here on my study, published under the title, "Capital Corruption," that 900 of these votes are not, in effect, visible. And, as a result, often deals can be cut and arrangements can be made, such as was referred to, in the milk area, and the car dealers, and in many others. Used car dealers, which, unless something unusual happens, or unless some investigative reporter or Common Cause study takes them on, as a rule the public is unaware that these things have taken place; and therefore cannot hold Members of Congress accountable.

The problem goes beyond this or that piece of legislation. There is an accumulative process which needs to be addressed. It can be considered in two areas: Capacity to engage in economic policy, and our defense policy.

I would put it to you—and I will not provide all the details now, but I have got to make an addition, go back to the footnote in this little study I did on capital corruption, that we no longer can conduct rational economic or defense policy, because of the influence of PAC's.

But let us take two examples, which will have to stand for all the others.

About a year ago there was very wide agreement among experts, among leaders of both political parties, the President and the public, that we should have a flat tax, a tax in which most if not all loopholes would be closed. There was no serious economist, major intellectual, or major political figure who found any fault in the idea of having a flat tax.

And we are not going to get a flat tax. It was very easy to predict that we were not going to get a flat tax, because behind many of the loopholes stand very well-heeled PAC's, which have been securing, that their loophole will be widened or maintained or redefined, but, in the end, whatever tax reform we get—I hope we get some—it will not, in any way or shape, approach that economic resolution, that economic approach which experts and public leaders agreed would be to the advantage of the public.

I could sit here the rest of the week and cite other people's legislation, from the Development Act to the one which Mr. Edwards benefits from, which was supposed to protect employees when there are inappropriate imports. I could take each one of them and show

how in each case what started like a sensible public policy, ended up by being perverted once the PAC's got their hands on those who were writing the legislation.

Now, the ultimate test is, of course, defense, because you would think that if there is one area in which the PAC's would at least pause for a moment, it is the national security, because we would think that while they can talk about economic matters, after all, it is just money, although often, of course, economic future aspects of living, our health, science and culture are all dependent on the economy.

But nothing should be more important to us than our national security.

What happens is there is a very clear correlation between those things which you can generate revenues from, and therefore are of interest to the PAC's, and those items from which you cannot generate revenues for those who are supported by PAC's.

If you take the defense bill and you separate it, as I did, into segments, and you put at one end those things which generate the largest stream of profits, the big-ticket items, then you put next in the hierarchy the things which generate less of a flow of profit, such as repairs, and then you put further down things which you cannot benefit from, such as salaries for the Marines; then you see a very high correlation between resources going ever more—ever more—to large-ticket items, less to maintenance, and ever more neglected are, in effect, our conventional forces.

So that the net effect is, that it tilts over nuclear weapons, because the strategic systems are the ones which the PAC's promote. There is no PAC for the Marines, there is no PAC for the foot soldier, there is no PAC for conventional troops. And so we get ever closer to the flashpoint, we immediately reach the flashpoint in the case of the local conflict. We would have to resort to nuclear weapons for other reasons, but included is the fact that this is the way the PAC's have arranged themselves.

Now, the argument is made, and I was sorry to hear this figure repeated today, that, how could the PAC's have influence, if all they can give is $5,000? Indeed, ads have been run in the Washington Post, the New York Times, the Wall Street Journal, arguing that, What is all this fuss about, all they give is $5,000.

Well, this is really disingenuous to explain. First of all, the total is $10,000, because, of course, it is $5,000 for the primary and $5,000 for the general election. Second, an interest group can generate as many PAC's as they need to. By my count, and it is probably incomplete, the dairy industry has 21 PAC's. Well, that allows them to give $210,000; other groups have generated 31 PAC's, 40 PAC's. It is just a question when you get tired of multiplexing your address book.

Second, of course, there are no limits on spending against the candidates.

So, by the time you put this together, and reference was made already to bundling, in effect there is no limit on how much private money can be contributed to a candidate.

Therefore, the only approach is the basic approach behind your bill, it is not to try to trim it, to nickel-and-dime it, to try to put one more regulation, one more disclosure; but the floodgates for private funds have to be closed, and the only way that can be achieved is through public financing.

As to the cost, I will not repeat the facts which have already been mentioned, that the costs are really small, that by repealing the tax credit given to political contributions you could easily cover them, that we spend more on deodorants than the total election campaigns would cost. But let us just add one point to this argument.

The point is, if you would get one bill less crooked, that would save the public many times over the total cost of public financing. So that, indeed, it would be a bargain.

Now, if you could just get, let us say, the support minimum to be on a rational basis rather than on a PAC basis. I can see how possibly the concern for cost is a serious concern, and as Senator Simon already referred to it, in my judgment correctly, as a smokescreen.

Now, the other thing which could be done, but I do not suggest this in any way to detract from the significance of the bill which does cover basically what needs to be covered, we could seek a voluntary agreement between the major political parties to shorten the campaign period.

In Britain, which, by most standards, is a reasonable democracy, the last campaign for general election lasted 30 days. In other countries, Canada and such, it has a limitation on the campaign period. I do not think in a large and complex country like ours you would want to have such a short period, but if you even had 3 months or 5 months, that already would be a benefit.

I very much welcome the idea of allowing some minimum amount of free time on public media to all the candidates.

There are other steps we could take to further solidify the approach, but, basically, there is no doubt in my mind that we need the approach suggested in the bill, and, indeed, it is very much overdue.

Thank you very much.

[The prepared statement of Dr. Etzioni follows:]

### PREPARED STATEMENT OF AMITAI ETZIONI, UNIVERSITY PROFESSOR, THE GEORGE WASHINGTON UNIVERSITY, WASHINGTON, DC, DIRECTOR, THE CENTER FOR POLICY RESEARCH, BETHESDA, MD

My name is Amitai Etzioni. I am University Professor at The George Washington University and author of "Capital Corruption."

There are numerous strong reasons to favor the Senatorial Election Campaign Act. Indeed, one must hope a similar bill will be introduced into the House.

First, and foremost, only a complete cut off of private financing of election campaigns will restore our political system to one person one vote, the basis of our democratic system. Historically we used to have property-weighted poll system. Only owners of land were allowed to vote, and only men of means were allowed to run for office. American democracy advanced following a gradual removal of these plutocratic definitions of the right to vote and made our government into a truer representative of all people.

Now, we are retrogressing toward a plutocracy. The recent flood of private money into Congress provides a much greater voice for those who are well heeled, enhances their ability to bring the vote out and to influence members of Congress once elected, than those less well endowed. As Senator Dole put it: the poor have no PACs. And, one may add, the PACs of other vulnerable groups have the most shallow pockets. Also, in numerous areas in which a narrow special interest is arranged against the public at large, it often can buy its way. Finally, conservatives of both parties draw more cash than liberals, and incumbents draw much more private money than challengers.

It makes no sense whatsoever to dam part of the private money floods and leave other gates open. All that does is to shift the flow. The channels must be shut simultaneously, as the present bill aims to do.

Opponents argue that public financing of congressional elections would protect incumbents, who would have less trouble qualifying than challengers; would be costly and unworkable; would put members of Congress in the position of writing rules that would affect their opponents' campaigns; and would undermine the political freedom of individuals and of PACs, which are depicted by opponents of public financing as part and parcel of American voluntarism and grassroots participation in politics.

At the same time it can be argued that, in fact, public financing would be a boon to challengers because it promises all who can mount serious campaigns that they will be provided with funds equivalent to those set aside for incumbents. The objection that Congress should not write the rules governing members' opponents' campaigns disregards the fact that Congress writes the rules anyhow; it prohibited corporate contributions, set the limits on individual contributions, and so on. And to the extent that campaign rules are deemed unfair or unconstitutional, they can be challenged in the courts.

Far from being excluded from participation, individuals not only could continue to express their political inclinations freely under a system of public financing, but would be better able to do so, on a more equal footing, to the extent that private contributions are diminished. All that citizens would lose in the process is their ability to purchase a disproportionate influence, measured by the size of their pocketbooks rather than by political viewpoint and dedication.

As to the argument that paying for all congressional elections would be costly, Gregg Ward, himself a PAC-man representing the Sheet Metal and Air Conditioning Contractors' National Association, and not a fan of public financing, provided an answer that I find difficult to improve upon. The total amount spent on congressional campaigns in 1982 was $344 million. Considering that in 1981 Americans spent $820 million on lipstick and $588 million on deodorant, such costs aren't excessive, says Ward. I agree; we certainly can afford to pay for cleaner politics. Moreover, the direct economic benefits to the public of cleaner politics, aside from the value of a more democratic government, are so immense that a more advantageous investment is difficult to imagine. There are numerous individual bills, from diluting the windfall-profits tax to jacking up the price of sugar and milk, that if defeated would return to the public many scores of dollars for each $1.30 (give or take a quarter) that public financing costs per head. (This figure is based on the costs of the 1982 election divided by the number of Americans.)

There is a fine way to recover a good deal of the cost of public financing of congressional elections: remove the tax credit now granted for contributions to PACs! The tax credit cost the U.S. Treasury about $117.6 million in fiscal year 1982. (Actually, as Representatives Matthew F. McHugh and Barber B. Conable, Jr., have suggested, it should be repealed anyhow.)

I call for the public to provide full coverage of campaign costs, costs we shall shortly see might be much reduced. Others have called for partial coverage—for instance, for public funds to "match" private donations and for both to be used in combination to cover campaign costs. This is less preferable: in effect, it keeps a role for income-weighted suffrage in the system, and it also complicates the system to a considerable extent.

Douglass Caddy includes in his book "How They Rig Our Elections" a list of reasons various people object to public financing (of any kind). I list his points and respond to them:

"1. So radical an idea [as public financing] should be subject to careful scrutiny before adoption." Although I do not see the idea as radical, I surely do not object to careful scrutiny, unless it is advocated to delay action.

"2. The belief that public financing will purify the electoral process in a way that no other reforms will is naive and untrue." A high-class red herring. I do not know anyone who claims the result will be purification, only that public financing will help substantially.

"3. Public financing is contrary to our tradition of private financing, a tradition which both weeds out unviable candidates and underpins the voluntaristic nature of our political system." First, public financing is now part of our tradition. Second, a candidate unable to pour in money, or to raise it, is not necessarily otherwise incompetent or "unviable." Last but not least, there are many other, less corrupting, ways to volunteer.

"4. Public financing will repose power over campaigns in the bureaucrats, not the people." Congress sets the rules and a bipartisan commission (FEC) and its tiny staff oversee their enforcement. The same procedure is used for setting and supervising the rules for private financing. Unless one favors a completely unregulated flow of private money into politics, this is not a point against public financing. To reiterate: one may be against big government and still, like Adam Smith, recognize the need for a government to ensure fair competition, competition by agreed-upon rules.

"5. Public financing is yet another example of the subsidy philosophy." So is paying legislators. Not all "subsidies" are bad.

"6. Public financing proposals prohibiting or unreasonably limiting private contributions may violate First Amendment guarantees of free speech." The Supreme Court has decided otherwise, ruling that the public financing of political campaigns does not abridge freedom of speech but, rather, furthers First Amendment values by using public funds "to facilitate and enlarge public discussion and participation."

"7. Whether or not Americans support public financing is open to question." Fair enough, but wait until they learn more about PACs!

"8. Public financing will unfairly work to the advantage of incumbents." If this is found true, more funds should be given to challengers (for instance, to match franking privileges members of Congress have), or spending by incumbents should be further restricted, especially during election months.

Senator WARNER [presiding]. Thank you very much.

We will now hear from Professor Blum.

Professor BLUM. Thank you, Senator.

I am here principally as a law professor. I teach constitutional theory, freedom of speech, and civil procedure at the State University of New York at Buffalo; and of course speak as an individual.

Prior to going to law school, I received a doctorate in sociology, where I had the opportunity to read and admire the work of Professor Etzioni, who has been a very distinguished sociologist for many years.

Although I must say, when I was a graduate student, I thought of him as a very conservative sociologist. And I think that does say something about the bill and the issue before us.

This is a situation where a lot of basically very conservative, highly respectable citizens have come forward, expressing great alarm over what appears to be a massive systematic corruption of our governing process. And in this respect we do very much resemble the progressive era of the early 20th century, which achieved many important gains in regard to stemming corruption.

I will be addressing mainly the issue of constitutionality of legislation, in light of *Buckley* v. *Valeo* and other recent Supreme Court decisions, which is my area of greater expertise; although I have followed a lot of the literature regarding the effects of campaign spending.

The issue of constitutionality, when you are dealing with something as important as freedom of speech, really ought to be addressed on two different levels.

The first is the broad level of constitutional principle; what is freedom of speech really all about for our governing system, and how has it been for the last 50 years?

The other level is the more immediate level of what has the Supreme Court done lately and what are they likely to do next if given the chance again?

That type of analysis is important for predicting what legislation will be held constitutional.

Now, the two approaches may reach the same conclusion, but they do require somewhat different kinds of thinking.

First, at the immediate level of what has the Supreme Court done lately and what are they likely to do again, there is now a pretty clear conclusion that we can draw from the fact that *Buckley* v. *Valeo* has and continues to furnish the framework that the Court uses in this area. That conclusion is, in my opinion, that effective regulation of campaign and electoral expenditures is possible, but it must be done primarily through public finance of elections.

The notion that we want effective regulation without public finance may have been theoretically possible before *Buckley* v. *Valeo,* but it is very unlikely that anything workable could be designed that would be held constitutional.

Now, as to the question of whether there can be any independent expenditure limitations, this is, to some extent, an open question at this point. *Buckley* v. *Valeo* and similar decisions have struck down particular expenditure limitations, but it is always unclear in those decisions whether they are being struck down because they were too stringent, too low, not carefully drawn enough, not well-enough supported by legislative findings, or whether, in fact, the Court really would proceed on a kind of much more radical principle in striking down any expenditure limitations.

My guess is, over time, the first will prove to be true, that the Court does not intend something as radical as saying expenditures can never be limited at any level.

But, at this point, it would not be prudent to rely simply on limitations, and therefore much more needs to be done with public finance.

I would like to——

Senator SIMON. Mr. Chairman, I hate to interrupt, but, unfortunately, I am running late for a couple of appointments.

Let me just say, I regret not having time to hear all three of you, and to have a chance to ask questions, particularly Mr. Sheppard, who is the brother of the distinguished Audrey Sheppard of the Democratic Senatoral Campaign Committee.

But one little thing, Professor Etzioni was talking about cost. I just quickly calculated. If General Electric, those 3 years, had paid the average tax of the average corporation in this country, those 3 years of that tax would pay for public financing for Senate campaigns through the year 2028. We are not talking about cost factors, we are talking about public policy and how we can make public policy really responsive to the needs of the people.

My apologies for interrupting and for not being able to stay.

Senator WARNER. Mr. Chairman, since there has been one brief interruption, I wonder, before you conclude your testimony, if you might reflect on the use of the word "corruption". It seemed to me you were somewhat unrestrained in the use of the word corruption in the political process. We are trying to do our best, I think, to make some repairs; but I do not find it to be corrupt. I have now been here in the Senate 7 years, and have another 5 ahead of me.

Perhaps, as you go along, you might reflect on your earlier comment, and select another word.

Professor BLUM. I think that is an excellent question, Senator, and it highlights one of the difficulties we have had with our language in the past: That corruption has always tended to be attached to individuals. You speak of the bribe of an individual corrupt legislator; when, in fact, the bigger problem that is becoming increasingly evident is not that at all, but a type of corruption of the system that makes the whole system function in a way that it really ought not to. Even if we have the most honest people in the world—and, by and large, I do think our Senators and Congressmen are fine, upstanding, honest people—they are forced, by the way the system works, in the dynamic of private money in elections, to act in ways that many of them acknowledge are not really how the society ought to be governed.

So I am deliberately using corruption in the somewhat looser way in order to try to get us accustomed to thinking on that level, because that is the important level where we have to focus our attention.

Dr. ETZIONI. Would you allow me to just read from the dictionary?

Professor BLUM. Certainly.

Dr. ETZIONI. The dictionary definition of "corruption" is: to change a sound condition to an unsound condition.

That is our position.

Senator WARNER. But, as you know, in the history of this country, the word "corruption" has been associated largely with individuals, and in a manner to leave the public with very little confidence to trust in the institution.

I share the views of many here today that we have got to make some changes. What they will be, I know not at this time. We will wait until the will of the Senate works on this issue.

But I do not want this hearing, which is now being shared by many viewers throughout the United States, to convey the thought that individually or collectively we are acting as a body corruptly, in the context of what corruption may, in years previously, have been in politics.

Professor BLUM. Thank you. I appreciate the clarification. Often what one says can have unintended consequences.

I would, at this point, like to commend Senator Mathias and Senator Simon and everyone who has worked on this bill. I think, first of all, it is clearly a bill that is constitutional, that has no significant constitutional problems or issues about it, and it is a very important first step in a direction that, the more one thinks about the issue the more important one realizes it is. And I am confident that over time these efforts will be vindicated in a number of ways.

Probably the major omission in the bill would have to do with a certain enforcement problem that would likely develop after passage, which has to do with the problem of independent expenditures. The bill, as has been pointed out by a previous speaker, makes an enormous step forward in having a floating ceiling on the amount of funds available to a candidate to offset the greater expenditures that a candidate using private funds can sometimes make, as a result of amassing greater funds than was made available initially under the public financing.

Section 504 of the bill which does this is a very important, I think as a landmark, step. The thing I would suggest for future consideration is extending section 504, its equalizing approach, to cover what are formerly demarcated as independent expenditures. Because one of the ways especially PAC's will work is when there is equalizing of expenditures by the candidate or his campaign organization, the easy thing for PAC's to do is simply to route that money to independent committees, which can then put on the same TV commercials or whatever, and that would escape the scrutiny of the bill, and would then be the loophole that created great inequities in expenditures and allowed PAC's to have almost their current level of influence.

The bill does help matters somewhat through the creation of public financing, even if it is unable to equalize and discourage massive PAC influences.

Let me very briefly say one thing about the broader question of constitutional principle, which is an area where there is really widespread misperception among the public.

People tend to think of freedom of speech, which is really one of our most important and cherished legal doctrines, as being far more individualistic than it in fact is. There are certain types of freedom of speech which receive what I have termed in an article in the New York University Law Review, "absolutist individual-right protection," where courts are discouraged from considering the broader public good, the broader public interest. You just absolutely affirm that right, because there is so little risk in doing so, and so much risk that the judges might not exercise their discretion right, you want a strict libertarian approach.

That applies largely to in-person traditional speech activities, leafleting, speaking at a microphone, renting a hall, and so forth. It does not apply to most of the activities for which campaign expenditures are made, it does not apply to purchasing access to radio and television. It does not apply to commercially hiring others as proxy speakers, including Madison Avenue advertising firms.

~~And~~ with this broader area of freedom of speech, the concern there is not to protect everyone's individual right, but to structure the process by which opportunities and access are parceled out, in such a way that you do serve the broader public good, and, in particular, you serve the public's need to have institutions flourish that further the free dissemination of ideas and further vigorous robust debate. And that is the reason why you do not want government being able to censor newspapers, large organizations, and so forth, rather than the individual publisher's individual right to do what he wants with his paper.

When we apply this notion of broader collective right to electoral campaign expenditures, what we are really talking about is how can the government be set up to function in such a way that it effectively serves our shared ideals of freedom of speech? And it has become increasingly apparent, through a number of studies and books, including Professor Etzioni's excellent work, that the real problem that government here faces now is the idea of excessive domination by organized private interests, which reduce the autonomy and room to operate of elected officials, which create a risk of regulatory agencies, which are very important sources of information, falling captive to the regulated interests which, in turn, diminishes their ability to get this information out to the public.

The net effect of unrestricted private money dominating elections is, in fact, to diminish the effective right of free speech for the public as a whole.

At the level of principle, that is one of the most powerful reasons in support of this bill.

Finally, let me say one thing in conclusion, which is that even though the restriction of independent expenditures is problematic under present-day constitutional law, there are ample precedents which show us that one can achieve the same desirable goals by equalizing expenditures. Whenever independent expenditures are made weighted heavily in favor of one candidate, public financing is to step in and give the other candidate an effective right of reply, effective access.

That, if past precedents and recent precedents are followed, will be held constitutional, and I urge the Senate to consider that seriously.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Professor Blum.

[The prepared statement of Professor Blum follows:]

## PREPARED STATEMENT OF JEFFREY M. BLUM

Mr. Chairman, I would like to express my appreciation to you for inviting me to testify before the Committee on this matter of great national importance. I commend you and Senator Simon for introducing this legislation which is clearly constitutional, which promotes first amendment values and is undoubtedly in the public interest, regardless of how that term is defined. Since I appear primarily as a constitutional law scholar and the Mathias-Simon bill poses no serious constitutional problems, I would like to address the related issue of how far Congress may go in remedying the harmful effects of large private expenditures in elections without running afoul of the free speech clause of the first amendment.

### I. THE CONSTITUTIONALITY OF EFFECTIVE CAMPAIGN FINANCE REGULATION WITHIN THE FRAMEWORK OF RECENT SUPREME COURT DECISIONS

Frequently this issue is addressed in terms of whether the Supreme Court's decisions on expenditure limitations in *Buckley* v. *Valeo,* 424 U.S. 1 (1976) may now be challenged or overturned. I believe that this is the wrong question, at least from a tactical standpoint, because effective regulation is possible within the framework set forth by *Buckley.*

Supreme Court decisions of the last ten years concerning freedom of speech and electoral campaign finance have consistently used *Buckley* v. *Valeo* as their starting point and primary source of authority for determining constitutionality of regulations. *See Federal Election Commission* v. *National Conservative Political Action Coalition,* 105 S.Ct. 1459 (1985); *California Medical Association* v. *Federal Election Commission,* 453 U.S. 182 (1981). Although Justice White continues to articulate cogent arguments against the *Buckley* expenditures holdings and there is much in the Court's *Buckley* opinion that is questionable from the standpoint of established First Amendment principle, the Court has given no indication of any willingness to discard *Buckley.* Thus, the best predictor of whether future legislation will be held constitutional is its degree of consistency with *Buckley.*

Fortunately this poses less of an obstacle to effective regulation of campaign finance than is commonly assumed. With public financing of elections, the harmful effects of private spending can be curbed in ways that are entirely consistent with *Buckley.* The proposed Mathias-Simon bill goes most, but not quite all, of the way toward this end. This bill is clearly constitutional within the framework of *Buckley,* and, as I will explain in this testimony, an important additional loophole-closing provision not presently in the bill would also be constitutional.

In gauging what is meant by "effective regulation" I assume that a major purpose of public finance is to eliminate vast discrepancies in opposing major candidates' abilities to get their messages to the voters, so that electoral outcomes will be determined by the differential appeal of the opposing messages rather than by one candidate's ability to flood the electorate with an abundance of unanswered messages. The question is: can this be achieved within the framework of *Buckley?*

I believe it can for several reasons. First, *Buckley* specifically approved the constitutionality of a legislative scheme that required presidential candidates to forego making expenditures beyond the amount of their public funding in return for being given such funding. As noted in the bill's fact sheet, the Mathias-Simon bill closely mirrors the approach already approved by the Supreme Court. That approach, however, has been plagued by two major loopholes. First, candidates who can raise privately, an amount of money exceeding the amount of their opponents' public funding may thereby generate a significant advantage. Section 504 of the Mathias-Simon bill closes this loophole by providing the opponent with additional funding to offset any such advantage that starts to materialize.

The second and more troublesome loophole is generated by partisans' "independent expenditures" in support of a candidate. It is well known that such expenditures can be the functional equivalent of expenditures by the candidate himself. (*Buckley* will treat as "independent expenditures" a supporter's purchasing of air time to show a candidate's commercials as long as there is no direct coordination or prearrangement between candidate and supporter.) It is easy to foresee that following passage of the Mathias-Simon bill, wealthy supporters of some candidates will move to subvert the intent of Section 504 by channeling expenditures away from the candidate's official campaign toward "independent expenditures" by groups, individuals or political action committees. Presumably such evasions not be directed by the candidate or his or her staff, but in actuality mere passive tolerance of supporters' machinations would suffice. *Buckley* left open the question of whether such expenditures could be limited when elections are publicly financed. The first time that issue came before the Supreme Court, the Court split evenly in a four-four vote and affirmed the lower court decision without opinion. However, last March the issue was definitively addressed in *National Conservative Political Action Action Coalition* v. *Federal Election Commission* when the Court struck down as unconstitutional the FECA ban on independent expenditures above $1,000 in publicly funded presidential elections.

A constitutional bar to limiting "independent expenditures" as defined by *Buckley* would be the death knell of effective regulation but for one thing. Under established constititional doctrine such a bar *will not prohibit Congress from affirmatively providing public funds in ways designed to offset advantages generated by such expenditures.* Thus, if candidate x running against candidate y has supporters who spend half a million dollars for his candidacy, Congress may increase the funding of candidate y by half a million dollars in order to give approximately equal access to messages favoring the two candidates. In other words the compensatory equalizing approach of Section 504 of the Mathias-Simon bill may be extended to take account of independent or ostensibly independent expenditures as well as those by candidates themselves. Alternatively, the approach can be applied only to certain types of independent expenditures, such as those above $500 or those used to purchase air time on broadcast media.

Such an approach is constitutional because Congress is not directly limiting the exercise of either supporters' or candidates' first amendment rights; rather it is pursuing a legitimate governmental objective in a way that will have the incidental effect of discouraging the exercise of certain rights—supporters will be less likely to make the expenditures if their spending is likely to be offset with federal funds. If the Supreme Court follows past precedents, such an effect will not be viewed as a constitutional infirmity.

For example, in *Harris* v. *McRae*, 448 U.S. 297 (1980), the Court upheld the Hyde Amendment's banning of Medicaid funds for abortion. The Court reasoned that although the government may not prohibit a woman from exercising her constitutional right to abort a fetus during the first trimester, it may allocate federal subsidies unequally in order to discourage the exercise of that right so long as a legitimate governmental objective is thereby served. Protection of fetal life was held to be a legitimate governmental objective.

The Section 504 approach, regardless of whether aplied to independent or only to candidates' expenditures, is closely analogous to the Hyde Amendment because it promotes at least three legitimate governmental objectives. It (i) allows Congressmen to perform their principal legislative tasks more effectively by freeing them from pressures to generate financial support; (ii) increases the fairness of elections by encouraging voters to decide on the basis of the content of political messages they have heard rather than be swayed by a large number of unanswered messages stemming from the superior financial resources employed by or in support of one candidate; and (iii) reduces the appearance of corruption and of domination by special interests or the wealthy in elections. Courts may disagree on whether these objectives are sufficiently "compelling" to justify a direct infringement of First Amendment rights, but there is no question as to their legitimacy. While the Supreme Court's *Buckley* opinion is sometimes erroneously cited as disapproving all attempts to equalize candidates' resources, in fact the relevant passage of the opinion merely disapproved the particular approach of equalizing by forcibly limiting speech. *See* 424 U.S. at 48–49. As *Harris v. McRae* makes clear, such an approach is constitutionally on an entirely different footing from the Section 504 method of equalizing by differential allocation of subsidies.

While the candidate with the perponderance of independent expenditures might try to claim that compensatory funding for his opponent is impermissibly discriminatory under the Fourteenth Amendment, his equal protection challenge is unlikely to succeed as long as there is a rational relationship between the compensatory funding alleged to be discriminatory and the legitimate governmental objectives listed above.

In order to use public funds to offset advantages generated by independent expenditures Congress must require reporting of such expenditures. It is significant that *Buckley* upheld the constitutionality of all reporting requirements, except insofar as they were directed at minor parties where there was a heightened risk of forced disclosure leading to intimidation. The Court stated, "disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity." 424 U.S. at 67.8

It is also worth noting that the reach of the Buckley expenditures holdings tend to be exaggerated in the public's mind. The Supreme Court has never held or even stated that independent expenditures cannot be limited under any circumstances. It has struck down particular limitations of $1,000 for individuals and $5,000 for political action committees on grounds that they were unduly restrictive and draconian in light of minimal evidence that expenditures of such magnitude could pose a risk of corruption analogous to that of contributions. Recently the Court has likened these particular limits to allowing speech but prohibiting the use of a microphone. Implicit in this analogy is a tacit admission that limitations substantially higher than these may be found constitutional. Thus, shortly after holding that use of microphones could not be prohibited, the Supreme Court held that use of sound trucks could since the latter posed greater regulatory problems and were less essential for effective communication. It is quite plausible that when limits of $1,000 and $5,000 are raised to $10,000 and $50,000 respectively, that the amplification being limited will be seen as more like a sound truck and less like a microphone. The Court has now acknowledged at least theoretically that independent expenditures may pose risk of corruption if they are large and visible enough for candidates to take cognizance of them. But it refused to uphold the limits in Section 9012(f) of the FECA because of an absence of legislative factfinding to support them. The Court stated: "On this record, [the] exchange of political favors for uncoordinated expenditures remains a hypothetical possibility and nothing more." 105 S.Ct. at 1469. Since courts generally defer to the Congress' superior factfinding capacity, new expenditure limits supported by evidence that expenditures above that level do pose a risk of corruption are likely to be upheld.

## II. CAMPAIGN FINANCE REGULATION VIEWED IN LIGHT OF THE TRADITIONAL FIRST AMENDMENT PRINCIPLE OF EQUAL LIBERTY AND COLLECTIVE RIGHT

Lest my comments appear too narrowly drawn and legalistic, adhering to the technicalities but not the spirit of the first amendment, I would like to clarify matters regarding the essential consistency between regulation of spending in elections and what has generally been the dominant principle of free speech doctrine. Contemporary libertarians confuse the issue by portraying first amendment doctrine as more individualistic and anti-regulatory than it traditionally has been.

The traditional guiding principle of first amendment free speech doctrine is aptly summarized by the phrase "Equal Liberty and Collective Right." Freedom of speech is treated as a near absolute individual right that is to be recognized mechanically and without any balancing of broader social good only where certain traditional, in-person speech activities such as leafletting, marching or speaking to an assembled group are involved. Other types of speech activities, such as the reaching of mass audiences through electronic broadcast media, the placing of billboards in public or the hiring of proxy speakers receive first amendment protection, but the protection is of a different sort—courts are encouraged to consider and weigh broader societal needs and first amendment values from the perspective of the public as a whole, rather than merely focus on prerogatives and desires of the individual (or individual corporate) speaker. Because the traditional absolutist core of the first amendment covers speech activities that common people generally have the capacity to engage in, we speak of free speech-as-individual-liberty being bounded by a concept of equality. Hence the phrase "equal liberty and collective right."

There are sound reasons for the courts' historic policy of treating freedom of speech in this dichotomous manner. Within the narrow core domain absolutist individual-right protection is both necessary and feasible. It has been needed to forestall political repression of dissident groups, such as insurgent labor unions, religious minorities, civil rights and anti-war activists. Trusting decisions of whether to protect their in-person speech and assembly to judicial discretion runs the risk that during periods of peak controversy judgment will be clouded by what Justice Brandeis called "a dynamic of repression." The doctrine of first amendment absolutism was developed as a prophylaxis against this tendency and has been a useful and important part of the national policy of attempting to integrate and coopt dissident groups whenever possible. However, this particular goal of free speech doctrine can and has been achieved by restricting absolutist protection to the traditional in-person speech activities on which insurgent groups depend for their assembly and identity formation. Thus it has not been extended to speech through other media or to speech in locations other than private quarters or the traditional public forum.

Contemporary liberatarians erroneously extend first amendment absolutism beyond its established boundaries. Their argument that government should never limit or discourage political speech of any kind is a misapplication of traditional absolutist doctrine. Whenever expensive media are used and large sums of money expended to reach very large audiences, there is by definition a scarcity of opportunities for this type of influence. Few people can afford it. Rather than assuming that the wealthy are automatically entitled to as much of this influence as they can purchase, the principle of equal liberty and collective right directs that regulation is permissible to the extent it furthers the public interest generally and particularly the public's interest in having vigorous robust debate in elections.

The Supreme Court's *Buckley* opinion is most vulnerable to criticism for the naive and almost careless way in which it conceived the public's interest. Because the authors of *Buckley* failed to distinguish sufficiently between a libertarian laissez-fair approach and the principle of equal liberty and collective right, they unthinkingly adopted a conception of the electoral process that allowed the two approaches to be reconciled at the cost of judicial indulgence in extraordinary naivete. They assumed that more spending could be equated with more robust, open, vigorous debate. Subsequent experience has dramatically revealed the fallacy of this assumption. Increasingly there is evidence that unregulated private spending in elections makes candidates more dependent upon support given by special interests, and that it dampens rather than enhances the quality of debate. Compared with Western European and other democracies, the United States has far more private money spent on advocacy during elections than do other countries, yet it has one of the lowest voter turnouts. Moreover, as the levels of spending have continued to escalate, the extent of voter turnout has generally declined. *See* W. Crotty, *American Parties in Decline* (1984) at 4-12, 117-122. Although correlation does not equal causation, these figures should be sufficient to cast strong doubt on the *Buckley* opinion's facile equation of greater spending and more vigorous debate.

Traditionally freedom of speech, including the absolutist protection of individual rights, has been designed to broaden participation in democratic governance. Its purpose has been both to encourage debate and prevent the unwarranted exclusion of groups that are initially seen as posing challenges to the system as a whole. When absolutist individual-rights doctrine is extended beyond its original domain of protecting in-person speech activities and the small expenses needed to promote them (e.g., renting a hall or microphone) to cover all expenditures related to politics, the original purpose of free speech doctrine is curiously undercut.

Large expenditures in essence mean hiring the labor of many people whose "participation" in the political process is shaped not by their individual convictions, but by what will earn them a living. Where wealth is distributed unequally the ultimate effect of unrestricted private expenditures is to pressure elected officials to become more narrowly and strictly accountable to dominant private interests. This is turn diminishes their ability to generate a broader appeal, particularly among the disadvantaged segments of society. So the same groups that initially were brought into the system by direct first amendment protection may now be excluded indirectly by free speech protection of processes of influence-gathering that are different in kind from what was originally protected by the first amendment.

Given this obvious risk, serious rethinking of the role of freedom of speech in democratic governance is in order. The issue is too important to allow ourselves to lapse into the shallow embracing of marketplace metaphors that *Buckley* has encouraged.

This examination should address soberly and realistically the role of diverse electoral processes in promoting or impeding various functions of government. It should consider everything from the desired meaning of democracy to pressing questions of national security. In this latter connection I would make one observation.

The greatest danger to national security is the threat of nuclear war by miscalculation, which is exacerbated by a spiraling arms race. Tremendous advances in offensive weapons have shortened decisionmakers' response times in a crisis, have begun to make the idea of preemptive strike more thinkable (although still probably suicidal), and have created fast-moving intermediate options of European theater war, all of which heighten the risk of global war by miscalculation.

The governmental bodies most directly involved, such as the Soviet and American defense establishments, appear too beset by bureaucratic inertia and private interests to bring the process under control. Thus it is likely that in upcoming years Congress may be called upon to play a crucial role in reversing the drift toward unintended annihilation.

While the societal processes that influence nuclear arms decisionmaking are truly complex, it seems likely that elected officials' excessive dependence on the support of organized private interests may impede their ability to accomplish this supremely important task.

The public as a whole desperately desires peace, but they are not sufficiently organized with lobbyists and knowledge of specific weapons to translate their general yearning into the type of focused political pressures that will influence specific weapons decisions.

A premium thus is placed on nurturing what Edmund Burke called "the trusteeship view" of representation. Elected officials must be given ample time and protection to exercise their independent judgment as guardians of this public interest.

While little definitively may be said at present, and further study of the problem is surely needed, it may well be that these ultimate questions of national security furnish the most compelling reasons for public funding and effective regulations of private expenditures in our national elections.

The CHAIRMAN. Mr. Sheppard.

Mr. SHEPPARD. Thank you, Mr. Chairman.

I will spare you the complete prepared remarks.

The CHAIRMAN. The full prepared remarks will appear in the record as in all other cases.

Mr. SHEPPARD. Thank you.

I think Washington often suffers from a lack of institutional memory, and I think where reform of congressional rules and election laws are concerned, Congress, particularly, sometimes seems afflicted with political amnesia.

We need to consider that the present system is the result of yesterday's bright-eyed reforms, and we need to approach the new reform effort, which is urgently needed, with an awareness of what the consequences of those past reforms have been.

In my prepared remarks I have gone on at some length describing what I think have been many of those unintended and, in many ways, unforeseen consequences of reform. A number of them have been sketched out in the testimony earlier today.

The present hearing on S. 1787 provides a welcome opportunity to consider the proposed new round of campaign finance reform. Perhaps being a bit of a devil's advocate here, there are some reforms in addition to the ones set forth in 1787, which I would like to explore briefly with you. I guess I should say at the outset that I congratulate you on sponsoring this bill, and I think it would be a great improvement over the present system.

But in some ways it fails to address other aspects of the present system, which really should be addressed during this round of reform.

The Mathias-Simon bill is laudable, but piecemeal in its approach to campaign finance reform.

While a system of public financing of general elections for Senate races might well be an improvement over the present system, the bill fails to fulfill other important aspects, for instance, primaries in the House, which I would hope would be addressed in this phase of campaign finance reform.

I think Congress is probably unlikely to enact a law providing for public financing of simply the Senate as opposed to the House, and I think you would have a similar situation to that which happened when you had public financing of Presidential campaigns, but not of congressional campaigns, where an entire infrastructure of campaign contributions and PAC and lobbying access would switch over to, in this case, the House.

By failing to address that, and also by failing to address primaries, you still leave in place the significant impact on the system.

More fundamentally, S. 1787 does not accomplish several other desirable objectives of a new-reform effort. It does not seek to break the money-based direct links between special-interest groups and candidates in a more profound way.

What I have tried to do is set out some ideas of how one might go about that, were there to be the political will and political support to try and do that.

One idea would be to try and approach this whole area—and this goes against what Senator Kerry is trying to do, that, instead of abolishing tax credits for political contributions, that they should be expanded. What we need to do is to encourage small contributors to participate in the campaign contribution process, and I would suggest that a way to do that would be to give all taxpayers a tax credit of 100 percent up to $500, so that those taxpayers could feel a part of the system, in some ways it would be like giving them monopoly money, that they could contribute to the candidates of their choice.

This is far preferable to a system in which small contributors or perhaps now people who are not even that interested in politics, are browbeaten by PAC's to contribute money to the PAC's, and then the PAC, oftentimes represented by someone in Washington, decides how to allocate that money.

I realize that this could be seen as a drain on the Treasury, but I think that it is a drain that is well worth the cost.

In addition, instead of approaching the process of campaign finance reform, from the supply side, as it were, dealing with expenditure limitations, instead we might look at the demand side of the campaign finance process, and look at ways to try and reduce the cost of campaigns, rather than imposing some sort of straitjacket of expenditure limitations, which would vary according to States, which raises the problem of independent expenditures as well.

One very urgent need would be to try and reduce the cost of campaigns at a stroke by requiring, as a condition of Federal Communications Commission licenses for television and radio stations, the provision of free air time to qualified candidates for Senate and House and possibly for other elections as well. We should also encourage—although we could not within the parameters of the first amendment—require newspapers to participate in this way as well. We should encourage, across-the-board, opportunities for the ventilation of political ideas by candidates who may not be personally wealthy, who may not be tied in with special-interest groups, PAC's or wealthy individuals, and thus really do not have an opportunity or perception on their part that they have an opportunity to run for office and have a real good chance of winning.

If we shift the focus a little bit from the expenditure side to the demand side and look at ways of cutting costs of campaigns, perhaps as much as 50 percent in many campaign budgets, by reducing the cost of media, we could make a large step in that direction.

The other thing I would think would make some sense would be to have a system of campaign franks, similar to the system that we now have for franks of mailings from incumbent Members of the Senate and the House to their constituents. You could impose a requirement that, perhaps with about 6 months to go before an election, candidates, including challengers—and perhaps you would want to do this in the primaries as well—would have an opportunity to communicate through direct mail, using a campaign frank rather than a congressional frank, with the electorate. This would be a way of guaranteeing that all candidates have an opportunity to reach the electorate in at least some fashion, which I do not think necessarily is the case at the moment.

I have a number of other suggestions but, in the interest of time, I will limit my remarks, and I will be glad to take any questions.

In conclusion, it seems to me that S. 1787 is a step in the right direction. I am in favor of a form of public financing, but it would seem to me that we need something more comprehensive than this proposal.

The last thought I would leave with you, and I know this is an iconoclastic view, but I would ask you to consider, at least as a part of a public financing procedure, that you consider some portion of public funds going not directly to individual candidates in their States and their districts, rather to give some portion of public financing, through the major and also possibly minor, political parties. One of the unfortunate implications of the rise of television in American politics has been a diminution of the importance and influence of political parties.

I happen to believe that political parties are important, should be made to be more important, and we should not try and do that at the expense of television, rather, we should try and use political parties and channel their influence through television and through the existing political processes.

A way to do that would be to provide some portion of public financing to the leaders of the campaign committees of the major parties, and committees of the minor parties, on a formula basis, so that the leaders of those parties could apportion funds to their candidates on the basis of need, so that the lion's share of the money would not keep going to incumbents, and so the challengers would have better access to funds, and perhaps have a better chance to unseat incumbents.

Thank you very much for your attention and for allowing me to testify.

[The prepared statement of Mr. Sheppard follows:]

## PREPARED STATEMENT OF BURTON D. SHEPPARD, ESQ., SULLIVAN & WORCHESTER, BOSTON AND WASHINGTON, DC

Washington often suffers from a lack of institutional memory. Where reform of Congressional rules and election laws are concerned, Congress sometimes seems afflicted with political amnesia.

There are many ironies in the politics of reform. Not least among them is that yesterday's bright-eyed reforms often become today's disappointments or even disasters.

The present hearing on S. 1787 provides a welcome opportunity to consider a proposed new round of campaign finance reform. To be sure, significant reforms in this and other areas are urgently needed, expecially in view of widespread dissatisfaction with Congress's performance and a growing awareness of the inequities of the system of campaign finance. However, in my opinion Congress must first refresh its institutional memory of past reform efforts in order to try to sidestep the many pitfalls of past reforms. This should be especially so since many of Congress's most serious contemporary shortcomings stem directly or indirectly from past reforms.

In my opinion, today's Congress—prominently including the campaign finance system—amounts to a collection of scandals waiting to happen. Many of these involve a campaign finance system increasingly skewed toward well-heeled, organized special interest groups. But another involves Congress's growing inability to function effectively. The biggest scandal of all is that a Congress composed of intelligent, hardworking, well-intentioned public servants continues to baffle, disappoint, and ultimately fail us. A congress prone to fragmentation in the best of circumstances in the age of the individual political entrepreneur now flirts with anarchy. And a Congress faced with the hard issues of budget cutting and trade policy and tax reform in an era of massive trade and budget deficits is sorely tempted to pass the constitutional (or unconstitutional) buck to the president. A Congress well structured to deliver individual benefits and other news seems incapable of effectively functioning when tough, collective decisions are necessary.

While Congressional structure, rules and election procedures may seem esoteric, they form the backdrop for these substantive issues and for overall Congressional performance. And a key point is that this disappointing Congressional performance, the structure of Congress and the system of campaign finance are not separate issues. With this in mind, I ask the Committee's a indulgence to sketch out what I believe are some of the lessions of recent Congressional reforms, broadly constructed. This will provide context for my comments on S. 1787 and suggestions for a comprehensive package of campaign finance and other reforms.

### AN OVERVIEW OF THE CONGRESSIONAL REFORM EXPERIENCE OF THE 1970'S

As described in detail in "Rethinking Congressional Reform," my view is that a decade of reform left Congress more fragmented, more susceptible to special interest influence and less likely to produce comprehensive or efficacious national policies. In sum, reform dove-tailed with other forces to exacerbate some of Congress's already prevalent dysfunctional tendencies—individualism and entrepreneurialism in behavior and substantial incoherence in policy formulation.

A well-intentioned series of reform efforts led to consequences which were often unanticipated, sometimes unintended and cumulatively counterproductive. Areas of reform activity were:

Party reform, especially in the House Democratic Caucus in the 1970s tending further to fragment power in the House;

Committee reform, the unsuccessful attempts to rationalize the House Committee structure;

Campaign finance reform, which provided the increasingly fragmented structure with institutionalized appendages of special interest groups gaining access in exchange for campaign contributions, honoraria and the like;

Other aspects of Congressional procedure, budget process, anti-secrecy, ethical behavior, etc.

Reform operated in complicity with other factors to render the Congress less capable of serving the public interest. Among the significant developments associated with the reforms of the 1970's were:

Disjointed and contradictory reform efforts produced reforms which helped further fragment Congress. This further fragmented Congress became more responsive to new and more numerous special interests.

The new politics of campaign finance formed a strong link between special interests and Congress. Increasingly campaign contributions had less to do with campaigns. For incumbents, contributions became "deterrents" to scare off possible challengers. For PACs and other groups, contributions became "dues" for entry into the world of Washington influence. As Congress itself became more decentralized, the special interest appendages of Congress became more centralized, based in Washington and both leaders and followers to strategic "national" conventional wisdom about political trends. And while "grassroots" and region, party, ideology and other factors spurring allegiance to certain interests remained significant determinants of voting behavior, PAC contributions became increasingly important in nudging members toward actions—or inaction—favoring special interests.

Reforms designed to accomplish legitimate institutional objectives—e.g., asserting Congress against the executive in the Nixon era—were seized upon and used by special interests to accomplish their own goals.

While the legislative process has always been subject to biases, the reformed process has created new biases which, while subject to greater public disclosure, are more directly based on campaign contributions. Special interest groups and particularly PACs now exert substantial influence both in mobilizing Congress to action on certain issues and immobilizing it on others.

PAC money is selective and mobile. It clusters around the new, decentralized power centers and it follows the issues that affect interest. The issues that committees and subcommittees take up help determine where PACs will "invest" their contributions.

A major effect of a reform effort initiated to strengthen party discipline and to advance liberal Democratic policy was ironically to weaken party discipline even further and make it harder to pass liberal Democratic legislation. On balance, reformers (and their careers) fared better than reform; and liberal Democrats enhanced their individual power bases more successfully than they were able to use them to advance liberal Democratic goals.

Special interests' stakes in the process, and influence over it, now extends not only to policies that concern them—but over policies well beyond their direct special interest concern.

Special interests' stakes in the process also now extend to the process itself. It is difficult enough to reform an institution whose processes serve the needs and preferences of incumbents, but the difficulties of reform are further complicated when special interests themselves have become an additional player on process reforms. Here is the rub: how to pass anti-special interest reforms in an age when reformers essentially need special interest "permission"?

A reformed Congress is a "weakened" Congress in the sense that Congress is often hamstrung by the multiplicity of interest groups and its own internal access points. It becomes incapable of achieving consensus on policy or acting in an expeditious, effective fashion. Of course, the other side of this point is that a Congress with an abundance of power centers led by independently entrepreneurial members makes it hard for any leader—including the President—to lead in the direction of universalistic (as opposed to particularistic) policies. However, a "weakened" Congress does not necessarily mean a strengthened President; in fact, the opposite appears often to be the case: i.e. a diffuse Congress weakens the entire American political system.

There has to be a better system. While it may not be realistic to try to "dig up" the roots of the present system, it is possible to identify "wholesale" reform proposals designed to fashion a system by which the Congressional process is rendered more efficacious and the financial link between special interests and individual candidates is at least loosened and preferably severed. In addition, while the increasing importance of money is certainly a major problem, it is not the only problem. New ways must be found to make Congress more capable of rationally dealing with national problems. This involves the creation of new political incentives and structures within Congress.

The consequences of reform, of course, have not been value neutral. Rather, the implications for power and policy have been a series of biases which are revealed and manifested by the existing system. These biases can be seen in the context of the trade-offs of costs and benefits to interest groups and society which result from the inter-play of groups in the Congressional process. A policy-by-policy and subcommittee-by-subcommittee approach best highlights these complicated biases. But as a general observation, the fragmentation of Congress has rendered Congress more capable of serving interest groups which benefit from concentrated benefit/distributed cost policies, less capable of producing concentrated cost/distributed benefit policies—and has set itself up to accomplish its own members' electoral and other goals by organizing itself to focus attention on the concentrated cost/concentrated benefit policy areas—which constitute the major battleground of Congressional politics. The ability—even enthusiasm—of Congress to engage in distributive politics belies its in-capacity to deal effectively in the area of redistributive and universalistic policymaking—which has been recently in such evidence.

### CAMPAIGN FINANCE REFORM: UNINTENDED CONSEQUENCES AND COUNTERPRODUCTIVE RESULTS

The campaign finance reforms of the 1970's gave rise to a number of unintended and/or unforeseen consequences and counterproductive results.

Among these consequences:

Reforms designed to reduce the influence of "fat cat" wealthy individuals have given rise to a system dominated by special interest group PACs. (The proliferation of corporate and conservative ideological PACs was a particularly unwelcome and unintended consequence in the eyes of organized labor, which had been a strong backer of the original reforms spawning the rise of PACs). Moreover, while PACs now yield tremendous power, an elite of wealthy individuals—as such, and through PACs—continue to have strong influence in the political system via campaign contributions.

By adopting public financing of presidential elections but not of Congressional campaigns, Congress set the stage for a massive infusion of special interest access money to Congressional campaigns in the period after 1974.

The infusion of PAC money to Congressional races, along with the explosion in the number of corporate PACs in the late 1970's and early 1980's, has aided two classes of candidates: incumbents of both parties and some Republican challengers to Democratic incumbents.

The pro-incumbent bias of contemporary campaign finance has resulted in a system in which campaign contributions have become oddly disconnected from campaigns. Incumbents, rightly or wrongly perceiving possible challengers, assemble large campaign coffers to be used as deterrents against would-be opponents. Fundraising is easiest for members of the committees with greatest impact over "big ticket" areas of the economy: taxes, the securities and oil industries, communications, etc. But the key point here of the electoral disconnection is that fundraising becomes connected to access and influence on votes as opposed to the exigencies of elections.

While on the one hand the Federal Election Campaign Act has become a regulatory morass for candidates and a jobs program for lawyers, on the other hand this law has significant loopholes. One such large loophole is non-federal or so-called "soft" money by which political party committees can raise unlimited amounts of corporate and union Treasury funds for coordinated expenditures on party-building activities. This loophole has provided a convenient and undisclosed access point for special interests.

In sum, the campaign finance system hatched out of the abuses of Watergate has spawned its own inequities. It is increasingly difficult for candidates of ordinary financial means to assemble adequate resources to run credible campaigns. Moreover, candidates who are personally wealthy have a significant advantage over people of more moderate means due to the Supreme Court's ruling in *Buckley v. Valeo* that there can only be a limitation on what a candidate can spend in his or her own campaign if the election is one which is subject to public financing.

### EVALUATION OF S. 1787, MATHIAS-SIMON BILL FOR PUBLIC FINANCING OF SENATE CAMPAIGNS

The Mathias-Simon bill is a laudible, if piecemeal, approach to campaign finance reform. While a system of public financing of general elections for Seante races might well be an improvement over the present system, the bill fails to fulfill several of the most significant goals which the next wave of reform ought to address.

First of all, Congress is unlikely to enact a law providing for public financing of Senate general election campaigns but not of House campaigns. There would be an obvious lack of synchrony in such a system. Moreover, as evidenced by the experience after 1974 when Congress adopted public financing for presidential elections but not for its own elections, there would be several predictable consequences. The infrastructure of special interest money would "migrate" to that part of the system still providing access. Hence when presidential campaigns became publicly financed, substantial special interest money shifted to the Congressional campaigns. If Senate general elections were publicly financed, money would shift to Senate primary races and to House races. In short, if the goal is to enact public financing of Congressional campaigns, the first choice should be comprehensive application.

But more fundamentally, S. 1787 does not accomplish several other desirable objectives of new reform. It does not seek to break the money-based direct links between special interest groups and candidates in primaries. It does not seek to reduce campaign costs and thus broaden access to would-be candidates in primaries, and it does not significantly provide greater equity in the overall (i.e. primaries) process. Moreover, S. 1787 is vulnerable to the allegation that it is yet another politicians' "raid on the treasury" in an era of massive deficits.

My most fundamental objection to S. 1787, however, is that it does not significantly alter the relationship between special interest groups and candidates except in general elections where both major party candidates accept public financing. Candidates could still solicit and expend large amounts in primary campaigns. In addition, I have my doubts as to the workability of the proposed expenditure limitations. The excessive cost of television, radio and newspaper advertising, consultants, direct mail, staff, postage, travel, and the cost of fundraising itself all make it difficult indeed to devise appropriate formula with respect to the "right" ceiling for each state's campaign. I would argue that we need to move toward measures designed to reduce the cost of campaigns in the campaign "demand side" rather than legislating a limit on the campaign "supply side."

This is why I advocate a series of measures (see below) which seek to increase the ventilation of political ideas in campaigns but do so through "backdoor public financing"—measures such as mandatory provision of free air time to qualified candidates by television and radio stations, a "campaign frank", and increased tax credits for political contributions.

In conclusion, I believe that adoption of S. 1787 would be an improvement over the present system. However, I suggest that it would be an incomplete and marginal improvement. Likewise, I believe that the recently proposed Boren bill, which would reduce the limit on PAC contributions from $5000 to $3000 and increase the limitation on individual contributions from $1000 to $1500, is similarly deficient. It is simply too little too late—a "fine-tuning" reform which would be of marginal impact. Its danger is that it might pass and thus be perceived as having "done something" about campaign finance reform. As such it might serve to weaken support for other, more comprehensive proposals. I also oppose a bill recently introduced by Senator Kerry which would provide for public financing of Senate general election campaigns by abolishing the tax credit for political contributions. I believe, as suggested below, that the tax credit should be expanded as an encouragement to broaden citizen participation in the campaign finance process. I believe that it is possible to fashion a package more comprehensive in approach (drawn from Chapter 12 of "Rethinking Congressional Reform") and, while certainly difficult to enact, one which might redress a range of problems associated with the present system.

## GOALS AND A PACKAGE OF "WHOLESALE" REFORM

A comprehensive "package" can be strategically planned, adopted and implemented, although the impediments are by now well understood. The prime objectives, based on the conclusions set forth in the section above and particularly what the last reform movement did not accomplish, are as follows:

1. To establish a more rational process of evaluating and planning reform.
2. To reduce Congress' direct linkages to special interests in the form of PACs and individuals; i.e., strengthen Congress's ability to make decisions on the basis of the merits of issues.
3. To strength the Congressional leadership, enhance Congress's ability to pass legislation which deals comprehensively with large national issues, and endow Congress with the capacity to adopt more coherent and effective policies, this requires a more rational, yet politically sensitive structure.
4. To provide Congress with new political incentives to seek the mobilize consent for, rather than dissent from, governmental proposals and policies.

Not everyone will agree that these are realistic—or even desirable—goals. While conceding that the chances of imminent success are slim, this is an attempt to outline what ought to be the goals of reform and to provide the means to achieve them. That is, if we were to fashion an "ideal" or model comprehensive package of reform, what would it look like?

## SELECTED APPROACHES TO "WHOLESALE REFORM" REFORM IMPACT STATEMENTS

The first suggestion is procedural. The Congressional reform experience has evidenced a pronounced tendency toward unintended consequences. Some individual reforms wrought changes which were not foreseen or desired; and the collective impact of reform had consequences different from what many reformers intended. To be sure, such uncertainty is inevitable. But it would be useful to integrate into the reform process a more rigorous consideration of what the consequences of reform will be. At the very least there should be a record of the "legislative intent" of the Congress when it undertakes reform.

Admittedly, clarity of intentions is often elusive. But it would be helpful to impose some sort of requirement of hard-nosed consideration of the matter of intentions. One way to accomplish this would be to require a report similar to environmental impact and inflation impact studies: any reform of party, committee or institutional rules should include a report on the intended and expected effects. There should also be provisions for periodic reports monitoring and analyzing the effects. While this approach will not foreclose the possibility of unintended consequences, it would at least create a record and a basis upon which to draw conclusions. It would also make it easier to adjust the reforms or undertake moves in a different direction after assessing the effects. Such a procedure might also require "benchmark reports" requiring reports on the results at predetermined intervals.

## REDUCING SPECIAL INTEREST INFLUENCE

The goal is an ambitious, comprehensive and efficacious proposal—one which deals with both campaign finance and structural reform: party-based public financing of Congressional Elections. PACs would be banned from contributing directly to the campaigns of individual candidates. PACs would be permitted to contribute, subject to limits, to the party campaign committees. In addition, the major party campaign committees, and qualifying minor party and individual independent candidates, would receive public financing on the basis of a formula which counted the number of candidates fielded multiplied by the eligible voters in those districts, then multiplied by a set number of cents per vote. The formula would be established by Congress and administered by the FEC.

The party campaign committee would then be in a position to provide campaign funds in the general election to their candidates on the basis of party priority, candidate need, and the particular circumstances of each local election. It is assumed and intended that the party committees would become instruments of the respective party leaders. Party leaders could pick and choose, perhaps subject to some upper limits, which candidates got significant, as opposed to token or zero, party campaign fund support. The leaders could take into account candidates who have little or no need for party contributions—because of adequate financing from private sources—and which candidates who, by virtue of their voting records, are not deserving of significant party assistance. Similarly, the leaders could channel large resources to candidates deemed especially deserving of party backing. The system could work either of two ways: publicly financed party contributions only in the general election, or party contributions allowed in primaries as well, perhaps subject to limits (for example, under the present system, party committees are limited to $5000 per candidate in the primary; i.e. they are treated like any other PAC). The preference here would be for the former. By limiting party contributions to the general election, the system would afford maximum access to attractive political "unknowns" who can emerge from the grassroots in a primary. Toward the same end, banning PAC contributions directly to candidates would mean that organized, usually Washington, D.C.-based special interest money would cease to flow into primary campaigns. This would put a premium on candidates' ability to raise individual contributions in the primary. But the assumption is that it is more likely that candidates will attract individual contributions from their local areas than from national organizations. The further hope is that the exposure provided by free air time—suggested below—would reduce campaign costs and enable to run a new crop of candidates who are not personally wealthy or likely to have preexisting relationships with interest group benefactors.

The two values advanced by such a system would be (1) in primaries, local responsiveness—i.e. the likelihood that candidates with strong local roots and support will emerge in party primary campaigns (absent national PAC money) and (2) in general elections, a stronger assertion of party positions on national issues and greater focus on policies rather than personalities. A key goal of this system, if administered equitably by the party leaders, would be to provide a new base of campaign funding for challengers of both parties and the incumbents who need it most. Incumbents would still have significant advantages; however, party leaders could channel campaign funds to challengers, instead of having funds sit in the banks accounts of "safe" incumbents. The ultimate winners would be an electorate presented with at least two candidates in each district who have resources to wage credible campaigns. Of course, some would fear giving the party leaders such political clout, suggesting that an unenlightened speaker might misuse or abuse this power. This, of course, is always a possibility. But a process must achieve and then sustain its legitimacy and in supporting a strong leadership one must be prepared to accept a strong leader with whom one disagrees. This idea of strong party leadership is propounded here because it is felt that it would be systemically beneficial, regardless of the strong leader's political disposition.

Some might argue that a system of public financing through the parties would move too far toward parliamentary style "party government." The view here is that there is no such jeopardy. Rather, the centripetal forces of individualism and electoral entrepreneurialism are so firmly entrenched in the Congress of the present and foreseeable future that it would be desirable to endow party leaders with a significant counterweight to that tendency. More traditional suggestions for structural or even constitutional reform to strengthen the parties hold out little hope. The most effective counterweight to the forces of diffused power is a new role for parties in the campaign finance process; and further, it would be intended and expected that such a reform would assert party influence on structure and policy-making as well.

This proposal for a party-based system of public financing would be preferable to the proposed direct public funding of Congressional candidates along with a cap on PAC contributions in that it would simultaneously advance several of the most important goals of reform. First, it would break the direct link between special interest PACs and candidates (and in doing so, the direct like between special interests and sitting members). It would set up the parties in several constructive new roles that have chronically eluded them in recent American Politics: as power centers in their own right over candidate recruitment and support, and critically, as wielders of both carrot and stick to party members in Congress. In addition, in an age when special interests are unlikely to wither away, the proposal would establish party leaders, through the campaign committees, as intermediaries between special interests on the one hand and candidates for and members of Congress on the other. PACs would still be free to give to party committees, and thus indirectly to party candidates. And of course special interest group advocates could continue to contribute as individuals directly to candidates of their choice (subject to the present or perhaps inflation-adjusted limits). And the PACs and/or their lobbyists would continue to be able to marshal all their information, resources, and grassroots support behind particular positions on issues. Gone, however, would be the conflict-ridden situation in which contributors to Congressional committe and subcommittee members sit in judgment on issues of vital interest to the contributing PACs. The fact and appearance of such direct quid pro quo politics would be banned.

Would special interest influence and "deals" be abolished at a stroke? Of course not. As long as there are interests there will be special interest influence and perhaps even the spectre of quid pro quo politics. However, eliminating direct campaign contributions would insulate to some extent individual members from overt financial pressure, and would establish parties and particularly party leaders as brokers on policy. They would then be in a position to day "yes," "no," "maybe," and "let's discuss this further" to supplicant interests. In other words, such a system would provide leaders with greater leverage over their rank and file members and increased legitimacy as buffers and intermediaries between Congress and external interests. By presiding over party fundraising and distribution, party leaders would have new tools to exercise leadership. And the ability of special interests successfullly to circumvent the leadership, while not eliminated, would be lessened.

Hence, unlike the direct public financing of candidates, party-based public financing unabashedly aims to change the balance of power in the system. Instead of merely seeking to limit the opportunity for money-based, direct influence over individual members, party-based public financing aims to ban it. Instead of creating an incentive for PACs to "buy in" early in support of certain candidates and strategically positioned incumbents, this system would urge PACs to cast their lot with a party. Undoubtedly, there would be the time-honored hedging of bets—i.e., contributions to both sides. However, to the extent the PACs throw in with one party or the other, this may also lead to a healthy development of greater party programmism in America. While it is unlikely that American parties will under any circumstances become significantly more ideological on the European model, it is reasonable to expect that different PACs representing diverse interests would gravitate toward the party most responsive to their concerns. This probably would mean that generally the large corporate PACs would gravitate toward the Republicans and labor PACs to the Democrats, with different geographical, professional, ethnic, ideological, and other sectoral factors leading PACs toward one party or the other. To the extent that American parties become less hollow "catch-all" parties, this would be salutary. And since the public financing component would provide money on a matching basis with established limits on a formula set by the FEC, the two major parties would receive a set amount for the election cycle, and minor parties and independents would receive money according to a formula; the FEC would see to it that the overall effect of public financing would be to equalize the competition between the major parties. The goal would be to allow each party and its candidates to get its message to the people—and to prevent one party from distorting the results of the elections or the functioning of the legislative process on the sole basis of its financial advantage.

Such a system would seek to correct several of the more glaring inconsistencies left in the wake of *Buckely* v. *Valeo.* In passing a system of Congressional public financing, the plan would put Congressional elections on a par with presidential elections. Insofar as this would be a system of public financing, this proposal would appear to pass the Buckley test on the issue of limits, i.e. the ban on PAC contributions and limits on contributions would arguably pass constitutional muster because the limits are all incidential to the system of Congressional public financing. Finally, such a process would seek to alter institutional mores and practices in a significant way without either resorting to constitutional change or a headon challenge to the existing Congressional structure. It is intended that, over time, this process would strengthen the leadership's had vis-a-vis committee and subcommittee chairmen and members generally. But this would take place via reform of campaign finance rather than another bruising attempt at committee or other structural reform. While such reform would not likely be easy, there is gathering momentum for campaign finance reform.

### "BACKDOOR" PUBLIC FINANCING: FREE TV AND RADIO AIR TIME, "CAMPAIGN FRANK," AND 100 PERCENT TAX CREDITS FOR CONTRIBUTIONS UP TO $500

Many will see a move toward party-based public financing as improbable at best. In seeking to imbue parties and particularly leaders with new, money-based clout, it may plausibly be argued that individuals and special interest groups would never agree to such a system. This is, of course, the problem with reform: if it is to mean anything it involves the redistribution of power. A more subtle but intriguing alternative approach is what we shall call "backdoor" public financing. This is to provide public financing through the back door, i.e. by a series of indirect rather than direct mechanisms for government-encouraged public subsidy of political campaigns. One major ingredient, discussed below under the reduction of campaign costs, is to require free television air time for candidates as a condition of FCC licenses. This would address the problem of huge media costs presently the most expensive portion of most campaign budgets.

Another aspect of this is use of a "campaign frank" for a certain number of free mailings during the course of Federal campaigns (similar to incumbents' Congressional mailings). One of the more effective, and increasingly expensive, means of communication is direct mail for both persuasion and fundraising. By allowing candidates a mechanism for free campaign mailings (subject to regulations and limits based on the number of voters and the allowable format), each qualifying candidate would have reasonable access to the voters' attentions. While it is impossible to guarantee that each candidate "gets his message out," this would certainly increase the likelihood.

And a third significant approach to "backdoor" public financing would be to use the tax code to encourage the broadest possible base of small political contributions. The tax code is already used in various ways to provide incentives and disincentives for certain kinds of social and economic behavior. At present approximately four per cent of taxpayers take the tax credit on political contributions up to $100 to $200 on a joint return. Broader political giving by taxpayers at all levels could be encouraged by providing a 100 percent tax credit up to $500 per annum. This credit would be provided on the short form and there would be an educational campaign to apprise all taxpayers that this is their opportunity to have a major voice in political campaigns beyond the act of voting. This would provide an alternative to PACs as the channel for citizen participation in campaign finance.

### TO REDUCE CAMPAIGN COSTS ON THE "DEMAND SIDE": FREE TELEVISION AND RADIO TIME AS A CONDITION OF FCC LICENSE RENEWAL

In addition to, and consistent with, the above proposal there must be an effort to reduce the cost of campaigns. With the rise of PACs and the increase of overt special interest politics has come an explosion of campaign costs. Million dollar campaigns for the House are not unusual and have become standard for Senate races. Senate races in populous states are necessarily multi-million dollar contests.

To a large extent, spiralling campaign costs are attributable to the increasing costs of media exposure. Newspaper and radio ads are big ticket items in candidates' budgets, and of course, television time, consulting, and production are extremely expensive.

Especially if public funds are to be expended and, in any event in the name of attracting candidates who are not necessarily wealthy, it is essential that any reform of campaign finance seeks to limit and preferably reduce the costs of campaigns. A proposal to that effect would be that as a condition of receiving a license from the Federal Communications Commission, each radio and television station would be required to provide free air time to Congressional candidates on the basis of a formula to to devised and administered by the FCC in conjunction with, and on the advice of, the FEC.

The formula would include some combination of candidate debates, question and answer sessions and other formats, as well as free time to run campaign advertisements produced and furnished by the candidates. This provision of free air time would replace all paid television and radio advertising: as another condition of FCC license, no stations would be permitted to sell advertising time to Congressional candidates.

This proposal, unlikely to warm the hearts of television and radio station owners, seems a small condition in return for their lucrative licenses in the greater interest of contributing to the health of the political system.

### THE CAMPAIGN FRANK

Candidates for the House and Senate should be allowed free postage (a "campaign frank") similar to incumbents' Congressional frank. This would be regulated to allow equal access to the electorate by all candidates. True equality would probably require a limitation on privately financed mailings by candidates using the "campaign frank."

In addition, while the following could not be mandatory since it would violate First Amendment free speech requirements, newspaper publishers should be encouraged to contribute similarly to the health of the political system by donating free advertising space to Congressional candidates or at the least, to provide space for the airing of candidates' views. The high costs of campaigning forces candidates to go out and raise the oftentimes objectionable special interest money. While public financing through parties would have a positive link-breaking effect on the process, it is also necessary to ensure that candidates have adequate opportunity to get their messages across to the electorate. Free television and radio time is critical. But in addition, newspapers of all sizes and orientation should provide free space to candidates to respond to questions, print columns expressing their views on issues, and in certain circumstances, be given a small amount of free space to run ads of their choosing. The combined effect of reduced media costs would be a significant decrease in the cost of the most crucial and expensive aspects of contemporary campaigns. Of course, this would not be guranteed to reduce, in absolute terms, campaign costs because campaigns have a way of inexplicably eating up however much money is available. In short, less money spent on media might "free up" amounts for direct mail, door-to-door campaigning, staff, etc. But public financing and free media exposure would create significant new opportunities for access to the electorate, attracting candidates who previously have not felt it financially realistic or practicable to run. And well-run campaigns could make the most of these opportunities and obviate the need for huge private sources of campaign funds. While incumbents would continue to have distinct advantages, the free time would help to create a greater degree of fairness, and a more informed electorate.

It is probably the case that a truly fair system of public financing of individual candidates would be one in which challengers receive more funding than incumbents. However, as long as incumbents in Congress decide the process, the likelihood of this ever happening is slim to nil. But in the proposed process of public funding through the parties, the door is left open for parties, within the context of their national priorities and strategy, to channel amounts to challengers against "targeted" opponents, which might accomplish something like this equalizing effect.

### TO MAKE ALL PACS "NON-CONNECTED"

If much of the above seems complicated and perhaps impracticable, there is a simple, targeted approach which could go a long way toward reducing the effective operation of corporate, trade association and labor PACs. This would be to abolish separate segregated funds by which "connected" PACs are presently bankrolled by corporation, trade association and union treasury funds. These funds provide for overhead and other administrative costs, and they absorb the substantial direct mail solicitation cost that are the big-ticket items of PAC operations.

Such abolition would place corporate, trade association and labor PACs on the same financial footing as ideological PACs; i.e. they would be banned from using their sponsoring entities' treasury funds. Instead, they would have to use internally-generated funds for administrative and solicitation costs.

Assuming that such a reform could pass—it is extremely unlikely because it cuts right to the heart of PAC power—there is the other problem that these PACs are already in existence, and hence less likely to be dealt a death-blow by the cut-off of treasury funds. While this might certainly be the case as opposed to a system which banned use of treasury funds from the outset, it might be expected that over time such a system would render business and labor PACs more like today's ideological PACs. That is, significant amounts of their resources would be expended on solicitation, overhead and self-preservation; less would be available for contributions to candidates. If one quick blow to business and labor PACs is desired, this is not a knock-out punch. But if a gradual diminution of PAC influence is the aim, the abolition of treasury funded PAC's would be a big step in that direction (although the reemergence of contributions to candidates by individual executives in place of PACs would likely result).

### TIGHTENED DISCLOSURE AND LIMITATIONS ON LOBBYIST-FINANCIERS

Another approach to reducing special interest influence would be to tighten disclosure and contribution-limitation requirements. To some this carries with it the alleged futility of most regulatory schemes and the response that it will only be a matter of time before people figure out means of circumvention. Perhaps. But several ideas hold promise if there were a concerted desire to identify fundraisers and key contributors with precision, and to limit the more pernicious aspects of the recent trend toward convergence of lobbying and fundraising.

First, if the FEC disclosure forms were to be truly revealing, they should require disclosure of individual fundraisers, the listing of events at which specific funds were raised and the identification of solicitors of funds when there is no event (e.g. direct solicitation or direct mail). What is presently lacking in disclosure is any real insight into who raised the money. While this may not seem significant to the uninitiated, who raises money is deeply significant to politicians.

Secondly, if, there were to be a serious attempt to circumscribe the permissible roles of lobbyists, this might include a ban on registered lobbyists soliciting or contributing money for the benefit of legislators whom they lobby. Of course, lobbyists derive their power and influence from many sources other than campaign contributions. But increasingly, lobbyists are the first ones in the door of Washington fund raising events—even if preferably they are delivering other people's or PACs' money. This reform would not necessarily reduce the influence of lobbyists (it would save them some money). But such a ban would attack a rather obvious conflict of interest in the existing system by which lobbyists are a ready source of support and solicitations for members of Congress with whom they transact business.

### CONCLUSION

Senators Mathias, Simon, Kennedy, Burdick and Hart should be congratulated for their co-sponsorship of S. 1787, and Senators Boren and Kerry for their recent proposals. Campaign finance reform is not an issue presently on the American political front burner. But it should be and will be again. The inequity of the process and distortion of substantive policies are, of course, only part of the problem. But they are a large part of the problem. By building a record of the past reform experience, and leading careful consideration of new proposals, the Senate Committee on Rules and Administration can set the stage for an important breakthrough on these issues.

There is no good reason why the American people should continue to feel ill-governed by Congress and helpless to do anything about it. The reform hour will come again and the key job is to be prepared. We must strive to ensure that the next wave of Congressional reform turns out more positively than the last one.

The CHAIRMAN. Thank you, Mr. Sheppard.

Let me start with you. Let me say that I do not think any of the sponsors of this bill have any illusions that it is the comprehensive and final answer to the problems of the electoral system. But it is the first step, and we all know that the longest journey always begins with the first step.

Do you have an estimate of the cost to the Treasury of increasing the deduction to $500?

Mr. SHEPPARD. Sir, I do not. I know it would be large. I mean, at present it is something like 4 percent of the taxpayers use that tax credit. I would hope that we would try and get it higher than that, maybe up to 40 or 50 percent. I do not have a projection. I know it would be very large, and I think that clearly would be an argument against it.

But whatever it is it pales in comparison to the cost of the present system.

The CHAIRMAN. It is not an argument against it with me. But it would, of course, be a form of public financing.

Mr. SHEPPARD. Yes, I would call it back-door public financing; but I think it is one that perhaps might be more palatable.

The CHAIRMAN. Well, I think that is right, there is a certain amount of hypocrisy in this whole subject, people say, "Oh, we can't finance campaigns out of the Treasury; we can't have public financing". But they will be all for the checkoff, they will be all for deductibility of political contributions. And I think we need to look at these things as they are, and that is the only reason I raise it.

Now, Professor Blum, you referred to preserving, or perhaps to establishing and then preserving the equality of campaign expenditures as between candidates.

That is all very well and good, and I understand your purpose there and am sympathetic with it. But we have to get this bill passed by an assembly of incumbents. How are we going to persuade incumbents that they want their challengers to be on an equal footing with themselves? And challengers who have not put in all the years of sweat and toil in the congressional vineyard.

Professor BLUM. Well, there would probably be a cynical persuasion and a noble persuasion.

I will start with the cynical persuasion first. That is, as a practical matter, incumbents do have some natural advantage of name recognition and past involvement with their campaigns and support more than challengers do.

So, as a practical matter, what it would tend to do if you equalized expenditures would be to lock in some sort of advantage for incumbents.

It would be smaller than the advantage sometimes is, as in the case of incumbents who are heavily supported with money, but it would also in some sense be guaranteed to all incumbents.

The more noble answer would have to do with the fact that this really would free incumbents to do a better job as Representatives and legislators. It would free them from having to be, in the words of some authors, "obsessed", I do not know if it rises quite to the level of obsession, but it is certainly a predominant time-consuming activity, of going around raising money, leaving one's real constituents to raise money outside the district, starting to worry about and raising money long before the election begins. It would allow the Representatives both to devote more time to legislating and to be freer to exercise their own judgment in the interests of what they perceive is how the country ought to be governed, rather than rapidly responding to an onslaught of demands from different interest groups.

One thing this would do, that incumbents would in some ways benefit from, is it would really improve the job of being a Senator or a Congressman. It would allow the more noble and very important leadership aspects of it to play a more principal role.

The CHAIRMAN. I agree with that. I think it is going to take a little educational effort to persuade many Members of that fact. Not all, by any manner of means. But some.

Professor BLUM. That is why we are so enthusiastic about what you are doing here.

The CHAIRMAN. I have been advised that there are now Members who are beginning to raise money for the 1990 election. [Laughter.]

Seriously. They are looking that far ahead. It is not just the time that is spent in raising money for the 1990 election, but think of what that does to divert your attention from the serious issues of 1985. I think, as you suggest, that any system that allows Members to devote more of their attention, more of their interest, more of their energy on the full agenda that exists today, is highly desirable.

Dr. Etzioni, you have talked about the corrupting effect, and I unlike Senator Warner, do not object to the word "corruption" because I think there is a corrupting effect. I think, just to be concerned in 1985 about raising money for the 1990 election is a corrupting effect of the system. That does not mean you have to be dishonest about it; but it is changing things for the worse.

What would be your measure of whether or not a system is working, either the present system or the system envisioned by this bill or by some other system. Would you measure it by the quality of the candidates, which is, of course, a subjective kind of standard? Would you measure it by competitiveness of the races? Or would you measure it by whether or not it seems to make the Congress work more effectively? Or maybe some other standard that you would suggest.

Dr. ETZIONI. Well, I appreciate the question, because it allows me to return to the question of corruption. I do not use that word lightly, and I am sharing Senator Warner's concern that we are on television at this moment and there are young people and innocent voters out there who may be subject to that term we are using here.

But, first of all, as a sociologist, I would like to report that I am not the one—of those of us who are critical of the existing system, I am not the one who planted seeds of doubt in the public's mind. The public is very much of the mind already that our political institutions, to a large extent, are corrupt.

Indeed, as previous witnesses referred to the term, most often repeated when they interviewed the public, and I quote it in reluctance and pain, "all politicians are crooks". That is obviously not true, but that is the public's perception to a very large extent.

One reason is that when you have a system as we have at the moment, some of it sticks to some of the participants. Now, I agree with Professor Blum that there are many outstanding Members of Congress, but there are others who have been swept away by these money exchanges, which have not been chased out of this particular temple.

Again, I do not want to take time to point fingers at people, that is completely inappropriate, but the public is sensitive to continuous reports of behavior unbecoming to a public official, which is a result of the system.

Indeed, a person of integrity, with very few exceptions these days, is sucked into the PAC system, because if their opponents use it, in most races if not all, they must participate if they wish to participate in public life.

Now, to answer your question, the measure of an appropriate political process is that the reflection of the representative body will be represented, representative of the views in the public, rather than some other distribution.

So, for instance, you would assume, if there are several million people who buy used cars and several hundred people who sell used cars, and long and careful studies show that some subsegment of the people who sell used cars engage in unethical conduct, such as running back the meters, and a law is before a representative body of the public, that they would respond (a) to the overwhelming majority, the people who buy the cars, and (b) to clearly established evidence that some of the used car dealers engage in unethical conduct.

When you see the situation where there is a high correlation between campaign contributions and people responding to an unethical segment of used car dealers, then you see the representative body acting in an unrepresentative manner. So that would be my criteria.

Now, I admit it is complicated, because we have to take into account the intensity of feelings, we do not just do nose-counts. But I am much less troubled by the single-issue groups who feel strongly about an issue and then demonstrate or petition, then when a very narrow person, using large amounts of resources, carries the day.

The CHAIRMAN. Yes, Mr. Sheppard.

Mr. SHEPPARD. Senator Mathias, could I just quickly try and answer your earlier question about how do we convince incumbent Members of Congress of the wisdom of these sorts of reforms?

It seems to me that there is an inherent conflict of interest on the part of Members of Congress passing on systems from which they have done very well, thank you. And it seems to me that one way, perhaps, to try and address this, admittedly a difficult one, would be to perhaps try to get the Congress and the President to appoint some sort of blue-ribbon, special advisory committee to look at this whole problem and to advise on it.

I know that commissions are oftentimes maligned, and it is a way of sort of deferring action or delaying action; but it seems to me that this is such a serious problem and there is such an ingrained conflict of interest on the part of incumbent Members of both the House and the Senate, that that may be one thing that should at least be considered.

Dr. ETZIONI. Very briefly, may I?

The CHAIRMAN. Yes, certainly.

Dr. ETZIONI. Again speaking from my limited sociological training, the system as it exists may be so entrenched that unless we have a social movement on the side of reform, we will not get the necessary reform.

We have, once in a while, in our history, on the issue of environment and the issue of civil rights, and, as Professor Blum mentioned, we had a progressive movement, that was necessary to provide a political backup for significant reforms.

So, maybe what we need, aside from a commission, which I would favor, is maybe when some Senator retires from public office, he could present to the public rather than to his colleagues, and you will find that the public, including conservatives, are very sensitive to the question of playing by fair rules, and it would strike a responsive chord and lead us to a new progressive movement, which may be necessary before we can then sit down and negotiate within these halls about specific amendments.

The CHAIRMAN. Let me come back to Professor Blum a minute.

You have made the point, both in your original statement and in response to my question, that it would be desirable to adopt public financing because it permits Members of Congress to exercise independent judgment. But can you have too much of a good thing?

Would it make Members so independent that they became independent of their constituents as well as independent of their contributors?

Professor BLUM. Well, in theory, you could have too much of a good thing; but, in actuality, given the reality of the United States and the way its democracy historically has functioned, that seems like a very remote kind of risk here.

It seems fairly clear to most observers that I have talked with or read works from that the bigger problem, in terms of Senators' and Representatives' responsiveness to their constituents is that they are forced to be too responsive to the special interests. And they do not have enough opportunity to do the sort of creative thinking to help formulate the interests of their relatively unorganized constituents into legislation; but are forced into a more passive position of responding to the bigger, the more wealthy, the more powerful, the more organized.

And, given that that seems to be the situation, I think we would not be getting too much of a good thing at all, but we would be beginning to take some steps toward getting enough.

The CHAIRMAN. You do not go quite as far as Mae West, then when she said, "Too much of a good thing is wonderful."

Dr. Etzioni, you say that there are numerous areas in which a narrow special interest often can buy its way against the public at large. Do you want to give us one example? You mentioned car dealers. But just one example that you feel is very strong on that subject.

Dr. ETZIONI. I must admit I am at a loss at the moment, because I am flooded; so I surely do not want to use what I feel personally strongest about, I am trying to find one in which the damage to the public interest is largest. I cannot imagine a more important example than the defense PAC. Because——

The CHAIRMAN. But, rather, that would be supported by the charts that Mr. Stern and Mr. Seymour exhibited just before your testimony.

Dr. Etzioni. Indeed. And, again, given a little more time, and maybe in written testimony I will provide exact figures and references.

We have a representative of a certain defense contractor who says, "I did fly out the members of the Armed Services Committee to see the particular product I promote," in this particular case it was a tank, "and I took them for a ride in the tank," but it is not enough, quote, "to show them the weapon, you also have to contribute to their campaigns."

Now, again, why would a defense contractor spend their hard-earned money unless they expected something in return? Indeed, you are tripping all over the defense legislation, yet again and again and again we neglect the considerations which our Commander in Chief, NATO, the House committees, and the military experts all agree, we need to build up readiness in conventional forces. However we tilt ever more in the opposite direction from which the experts tell us we should be going. And so, how could that be explained, other than by the correlation between where the PAC money flows and where the defense contracts go?

The Chairman. Mr. Sheppard, one last question.

You have said that outlays by corporations and unions in connection with the operations of PAC's are, in effect, unreported contributions. Suppose we were to take the interim step of requiring that all such expenditures be reported, would that be useful?

Mr. Sheppard. I think sunshine is always a good disinfectant. But I think that that would be another sort of half-step.

If I may, what I would suggest, and this is a way of perhaps making myself even more unpopular, if somebody really wanted to address the PAC problem—and I know Senator Boren has his approach with his bill to try and do that—I can think of no more effective way than simply by changing the campaign finance law to make it such that all PAC's would have to be so-called nonconnected PAC's, and thus would have to raise the money to cover their overhead and to do their direct mail, et cetera, rather than being able to use the money from the treasuries of corporations and unions.

And I think that over time that would lead to a situation in which corporate and labor PAC's would operate more similarly to the present ideological PAC's, in which large amounts of the money raised has to be put back into covering overhead and direct mail, et cetera. I think it would be a way of undermining the importance of PAC's, increasing the importance of individual contributions and other just public input into the process.

I think ultimately it may be a sort of slow way of making PAC's wither away, rather than go away in one fell swoop.

The Chairman. I would hope we would not have to take that kind of interim step, because if we do what the bill suggests, it would not be necessary. But when we come to markup in this room and around this table, why, we may need to consider all the possible alternatives.

Gentlemen, I think you have made a great contribution to this hearing today, completed the record, and we appreciate very much your being with us.

Thank you very much.

The committee will keep the record of today's hearing open for 1 week, in case witnesses wish to supplement their testimony or for other material to be added to the record.

The committee will now stand in recess until the call of the Chair.

[At 12:58 p.m., the committee recessed until the call of the Chair.]

[The following letter and statement were received for the record:]

U.S. SENATE,
COMMITTEE ON APPROPRIATIONS,
*Washington, DC, January 22, 1986.*

Hon. CHARLES McC. MATHIAS, Jr.,
*Committee on Rules and Administration, U.S. Senate, Washington, DC.*

DEAR MAC: I want to thank you for your kind invitation to testify on ways to improve the campaign finance laws.

This should be a matter of utmost concern to the Senate as it begins the final session of the 99th Congress and the final months of your illustrious service to the Senate and American people.

Unfortunately, I will not be able to appear in person and so with your permission, I would like to have the enclosed statement and table of figures included in the hearing proceedings.

Warmest regards.

Sincerely,

WILLIAM PROXMIRE, U.S.S.

## PREPARED STATEMENT OF HON. WILLIAM PROXMIRE, A U.S. SENATOR FROM THE STATE OF WISCONSIN

### COMPREHENSIVE CAMPAIGN REFORM: THE TIME IS NOW

Mr. Chairman, I want to thank you for the opportunity to address the issue of campaign reform. Mr. Chairman, you have been a tireless leader in the battle to improve our campaign system. I must also add that thanks to the tenacity of Senator Boren we have the opportunity to consider this issue.

Mr. Chairman, it has become impossible to talk about United States' elections without considering the pressing need for major election reform. It is a topic we have addressed before, as when I spoke before this very Committee in 1983 about campaign reform.

Campaign spending is like a rain swollen stream. As the rain comes down, the tiny stream bursts its banks and becomes a roaring river. As more waters feed into ths seething torrent, it becomes the raging flood that threatens to drown all in its rising waters. Mr. Chairman, I would submit that the flood waters of campaign spending are all around us. First we'll be knee deep, then hip deep, then the swirling tide will rise up to our chests and may finally drown us if we are not careful.

Consider a few numbers with me, if you will. For the 1984 Congressional races, all the candidates, and there were more than 2,000, spent a whopping $374.1 million. Now, I suppose we should feel a bit relieved that the amount had risen, according to the Federal Election Commission, "only" 9.3 percent over total spending in the 1982 Congressional race. But look at these other figures: from 1980 to 1982, spending in Congressional races increased by 43 percent; it went from $239 million in 1980 to $342.4 million in 1982. And in the two years from 1978 to 1980, spending then went from $194.8 million to $239 million. That was a 23 percent increase! If you look at the spending for Senate races, you certainly don't have to wonder why getting elected has become expensive, from 1982 to 1984 Senate campaign spending went up 23.1 percent, even though no 1984 Congressional elections were held in the big media states of California and New York. That certainly is not a figure to be proud of.

We all like to win, on the athletic field as much as at the election booth. But unless you're a superb athlete, rising campaign costs will lay you low just like the meanest football tackle. Consider these figures: the average cost of a winning campaign in 1984 was more than $288 thousand in the House of Representatives and an astounding $2,950,000 in the Senate. For these numbers to mean even more look back to 1974. Then the average cost for winning a House race was $42,500 and $438,000 in the Senate. That's more than a sixfold increase! I'll leave it to your imagination what the figures may be in another decade. We might even start wondering if the cynics aren't on to something when they suggest we've got the best Congress money can buy.

Why do I dwell on this? Why do I resent this flood of campaign money that threatens to drown Capitol Hill? It's because money doesn't come free. All this money that floats to campaigns comes with some sort of price tag. Now, I'm pretty sure there is nothing so blatant as, "Here is five thousand dollars Mr. or Mrs. Candidate, in return we want your vote on this matter that's oh so important to us." That's a little too obvious. It is also stupid and illegal. I can't imagine a legislator's vote being bought for just a few thousand dollars.

What I am more concerned about, however, is the pernicious influence of all this ready money. It might not directly buy votes, but the campaign money can do something magical: it can open doors and get access to a Senator or Congressman where there was none before. It certainly is difficult to turn a deaf ear to the wheedling of some special interest group when those same people helped fatten your war chest in the last campaign. Once you've flung open the door and said, "Step right in!" to campaign contributions, when do you say "no?"

Now I know you might say, "But Senator it costs a lot to get elected. Your own figures show that. Just take a look at the cost of television advertising!" Yes, just take a look at the costs: commercials that tell a voter absolutely nothing about the candidate; that distort ideas; that make mindless appeals to patriotism or fears, or hate; advertisements that compress issues that should be discussed at length into glib words and slick phrases. I've said it before and I will say it again: we're at the point in political campaigning where the most important decision for a candidate, one that probably will make the difference between election or defeat, is the selection of a media guru. I find that very sad.

Mr. Chairman, I must say something about PACs, political action committees. PACs are something like mushrooms that sprout magically on a warm, humid summer night. You can find them in every shape, color and hue. There are corporate, association, education, labor and medical PACs. What I find so fascinating is how they have grown, from 604 in 1974 to 3,992 at the end of 1985. And the money they have! In 1974 PACs provided $12.5 million in contributions. By 1984, the amount soared to $113 million. So as campaign costs have risen, PACs have been there, checks in hand, eager to help. But once again, all this money comes with strings attached. There is something I learned a long time ago, nothing comes free. Sure, the strings may be velvet and be ever so subtle, but nevertheless the strings are always there.

Involved with all this talk of PACs is a worry that the public interest is losing out and in its place the special interests are talking over. Special interests, by their very nature, focus their attention upon a narrow range of issues that affect a certain group of people. Thus, we have PACs that represent realtors, or teachers, or doctors, or seafarers. Now, there is nothing wrong with this. It is part of our First Amendment rights guaranteed by the Constitution that we can speak openly and freely. It would be tyranny to suggest that we not be able to join a political action committee and have it present its views before lawmakers. But what I worry about is the relentless growth of PACs and the fabulous amounts of money at their disposal. They are just like the mushrooms I spoke of earlier.

We must ask ourselves, Mr. Chairman, how much power and influence political action committees should have? How much money should they be able to spend? How much, I ask, should special interests be able to guide our legislation and shape our destiny?

Mr. Chairman, I have introduced campaign reform legislation that addresses these questions and would do much to bring balance and stability to our elections. My Clean Campaign Act of 1985 (S. 323, now in the Finance Committee) would limit spending, provide funding and bring PAC money under reasonable control.

In a general election, there would be a strict spending limit with a base of $600,000 plus 5 cents for each voting age resident of the State. I have included a table to show how much each State would be permitted.

There would be provisions for Federal funds if candidates collect a certain threshold amount from small contributors. One of the best ways that I know of to assert the general interest over the special interest is public funding using a tax checkoff.

I haven't forgotten about PAC money in campaigns. Candidates would still be able to receive PAC money, if they so desired, but it would only be up to 30 percent of the spending limit. I think this would help put a brake on the influence of the special interests.

In closing, Mr. Chairman, campaign reform is one of those important issues that we must deal with. Yet even more vital is the chance we have for comprehensive campaign reform. This is our chance to step back and ask ourselves what we are doing right and what needs improvement in the way we elect our leaders.

We've worked at campaign reform before. The reforms, I'm sorry to say were sometimes piecemeal. This nibbling, all too often, has had unintended consequences, as the example of the controversy over political action committees shows us.

Mr. Chairman, these opportunities for major campaign reform don't come very often, perhaps only once every decade. We only have to look at past efforts to realize that patchwork attempts accomplish little. In conclusion, let me urge that we make an all out effort to have comprehensive campaign reform become a reality this session. Let me also thank you, Mr. Chairman, for the opportunity to present my views.

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## Prepared Statement of Laurence Gold, General Counsel, American Federation of Labor and Congress of Industrial Organizations

The American Federation of Labor and Congress of Industrial Organizations [AFL-CIO] appreciates this opportunity to state the Federation's views on the financing of Congressional elections and to comment on the several proposals for amending the Federal Election Campaign Act now before this Committee.

The inescapable conclusion from a review of the experience to date is that the current campaign financing law has failed to stem the increasing importance of large political contributions in the political process and to halt the escalating costs of congressional campaigns. Accordingly it is our position that so long as the well-to-do are allowed to make substantial contributions to political campaigns, political action committees, [PAC's] which represent the special concerns of millions of Americans have a legitimate balancing role to play in financing of elections.

But it is also our position that large contributions from a single source, be it a small number of wealthy individuals with common interests or a group of political committees with common interests are not the best means of financing the political process. For such contributions have an inescapable potential for corruption and for undue influence. Congress acted wisely in attempting to place effective limits on the amounts which individuals and political committees may contribute to candidates and in placing restraints on the proliferation of PAC's. That attempt has not, however, accomplished its intended aim.

FEC statistics for the 1984 election show that congressional candidates raised nearly $400,000,000 during that election—almost twice the amount that such candidates raised in the 1978 election. Senate candidates alone raised a total of $148,369,364 for the 1984 general election. More than 25 percent of that amount was raised in individual contributions of $500 or more. (See attachment 1.) And, PAC contributions to Senate candidates running in the 1984 general election totaled $27,778,186 or 18.7 percent of their total receipts. A substantial amount of this money came from business PACs which are merely the alter ego of small groups of business executives and professional people who also make large contributions of their own. Thus the already disproportionate influence which wealthly individuals have on the political process is further augmented by these PAC's.

In contrast, a 1985 Democratic Study Group report shows that contributions of under $100 (see attachment 2) constituted only 23 percent of the total given to Senate candidates in the 1984 general election—a decline of 15% from the amount raised in less than $100 contributions in 1974. Given the report's methodology this in all probablity overstates the amount rasied in small contributions.

In our view there are two ways to end the dominance of large contributions in congressional campaign financing.

The first is public financing. Presidential public financing has been a success. As its congressional sponsors hoped, the system has engendered a healthy mix of small and large contributions in the primaries and has eliminated the dependence of Presidential candidates on those who can give the most. We believe that public financing of congresssional campaigns would achieve the same positive result.

Public financing of congressional campaigns is first of all the only way consistant with the Constitution to control the spiraling costs of congressional campaigns. Public financing would also provide an approximate balance of resources between candidates that would make congressional campaigns more like the debates on public policy the partisan political process is supposed to be and less like advertising for soap or toothpaste that demeans our democracy. And by limiting the amount of fund raising, public financing would encourage individuals to run for federal office who are reluctant to make the moral compromises entailed in endlessly soliciting for large contributions. Public financing would in these ways help to restore public trust in the intergrity of the electoral process.

For these reasons, the AFL-CIO has in the past and will continue to support efforts to enact legislation such as the Mathias-Simon bill, S. 1787, providing for public financing of congressional elections.

Short of public financing, we support, at least as an interim solution, the adoption of an overall ceiling on PAC contributions to congressional candidates, such as that proposed in Senator Boren's bill, S. 1806. For such ceiling to work, it must be backed up by "anti-bundling" amendment to prevent PAC's from serving as conduits for wealthy individual's contributions to candidates, otherwise it simply invites new schemes for evading the contributions limits.

It is unfortunate that overall PAC contributions ceilings have been coupled with an increase in the individual contribution limit. The problem with congressional campaign financing is not that there is too little in the way of large contributions but that there is too much. Congressional candidates are already receiving too high proportion of their funding from contributors of $500 or more. Increasing the individual contribution limits will simply enhance the already disproportionate influence of these wealthy individuals and will do nothing to increase the steadily declining number of small contributors.

Despite our concern about large individual contributions, and because of our recognition that campaign reform legislation necessarily involves compromise, we supported Senator Boren's bill when it was considered on the Senate floor, despite that bill's proposed increase in the individual contribution limits. And we intend, in the same way, to give careful consideration to each PAC contribution ceiling proposal and to judge such proposals on their individual merits.

While the 100 percent tax credit for campaign contributions to congressional candidates contained in the tax reform bill passed by the House is not before this Committee, we believe a few words on the reasons for the AFL-CIO's opposition to that proposal are in order. The 100% tax credit, by itself, will not end the dominance of large contributions in congressional campaign financing. Large contributors, whether wealthy individuals of PACs, will still moreover, encourage, not discourage, PAC "bundling" of individual contributions to congressional candidates thereby further undermining of the contribution limits of the Act. And the tax credit will provide an unfair advantage to incumbents over challengers since for the most part only incumbents engage in fundraising during non-election years.

Finally, we strongly oppose any amendment to raise the limits on national and state party contributions to candidates, to remove the limits on §441a(d) spending or to permit parties to accept contributions of corporate and union treasury money for administrative and solicitation costs. Regardless of whether in the abstract there is any merit to such amendments, given the current financial position of the two major parties, these proposals can only be viewed as partisan, divisive, and inherently mischievous attempts to frustrate any serious efforts to achieve campaign finance reform.

## ATTACHMENT 1

### BREAKDOWN OF RECEIPTS OF 1984 SENATE GENERAL ELECTION CANDIDATES

| State and candidate | Total receipts | PAC Receipts | Percentage of total receipts | $1-499 | Individual receipts breakdown | | |
|---|---|---|---|---|---|---|---|
| | | | | | Percentage of total receipts | $500 and over | Percentage of total receipts |
| Alabama: | | | | | | | |
| Howell Heflin D* | $2,247,582 | $845,323 | 37.6y | $598,771 | 26.6 | $664,906 | 29.6 |
| Albert Lee Smith R | 582,002 | 38,129 | 65.5 | 261,940 | 45.0 | 107,034 | 18.4 |
| Alaska: | | | | | | | |
| John Havelock D | 92,982 | 6,050 | 6.5 | 42,584 | 45.8 | 12,000 | 12.9 |
| Ted Stevens R* | 1,325,135 | 36,798 | 48.1 | 205,015 | 15.5 | 410,076 | 30.9 |
| Arkansas: | | | | | | | |
| Ed Bethune R | 1,076,792 | 236,987 | 22.0 | 241,396 | 22.4 | 520,567 | 48.3 |
| David Pryor D* | 1,910,676 | 711,047 | 37.2 | 515,147 | 27.0 | 621,935 | 32.5 |
| Colorado: | | | | | | | |
| William Armstrong R* | 3,105,821 | 800,256 | 25.8 | 1,030,378 | 3.2 | 1,108,914 | 35.7 |
| Nancy Dick D | 843,101 | 134,203 | 15.9 | 175,857 | 20.9 | 87,829 | 10.4 |

## BREAKDOWN OF RECEIPTS OF 1984 SENATE GENERAL ELECTION CANDIDATES—Continued

| State and candidate | Total receipts | PAC Receipts | Percentage of total receipts | Individual receipts breakdown | | | |
|---|---|---|---|---|---|---|---|
| | | | | $1–499 | Percentage of total receipts | $500 and over | Percentage of total receipts |
| Delaware: | | | | | | | |
| Joe Biden D* | 1,429,164 | 404,905 | 28.3 | 423,514 | 29.6 | 525,661 | 36.8 |
| John Burris R | 817,586 | 172,882 | 21.1 | 107,441 | 13.1 | 444,803 | 54.4 |
| Georgia: | | | | | | | |
| Sam Nunn D* | 1,292,637 | 381,914 | 29.5 | 271,381 | 21.0 | 488,256 | 37.8 |
| Idaho: | | | | | | | |
| Pete Busch D | 30,777 | 6,500 | 21.1 | 13,527 | 44.0 | 3,000 | 9.7 |
| James McClure R* | 1,268,707 | 551,062 | 43.4 | 344,959 | 27.2 | 259,802 | 20.5 |
| Illinois: | | | | | | | |
| Charles Percy R | 5,331,736 | 1,090,872 | 20.4 | 1,326,994 | 24.9 | 2,125,420 | 39.7 |
| Paul Simon D* | 4,586,036 | 898,145 | 19.6 | 2,268,069 | 49.5 | 1,188,386 | 25.9 |
| Iowa: | | | | | | | |
| Tom Harkin D* | 2,848,763 | 775,856 | 27.2 | 1,438,754 | 50.5 | 500,620 | 17.6 |
| Roger Jepsen R | 2,661,443 | 864,942 | 32.5 | 1,094,723 | 41.1 | 519,145 | 19.5 |
| Kansas: | | | | | | | |
| Nancy Kassebaum R* | 576,455 | 234,095 | 40.6 | 156,266 | 27.1 | 135,750 | 23.5 |
| James Maher D | 32,909 | 2,450 | 7.4 | 3,877 | 11.8 | 1,500 | 4.6 |
| Kentucky: | | | | | | | |
| Walter Huddleston D | 2,189,001 | 807,979 | 36.9 | 541,369 | 24.7 | 448,334 | 20.5 |
| Mitch McConnell R* | 1,591,303 | 284,496 | 17.9 | 512,443 | 32.2 | 749,756 | 47.1 |
| Louisiana: | | | | | | | |
| Bennett Johnston D* | 1,484,557 | 552,885 | 37.2 | 95,810 | 6.5 | 576,393 | 38.8 |
| Maine: | | | | | | | |
| William Cohen R* | 1,158,160 | 420,451 | 36.3 | 269,695 | 23.3 | 394,572 | 34.1 |
| Elizabeth Mitchell D | 437,517 | 450 | 0.1 | 287,559 | 65.7 | 114,863 | 26.3 |
| Massachusetts: | | | | | | | |
| John Kerry D* | 2,162,530 | 5,270 | 0.2 | 1,004,500 | 46.5 | 815,252 | 37.7 |
| Ray Shamie R | 4,196,521 | 21,185 | 0.5 | 1,089,062 | 26.0 | 533,410 | 12.7 |
| Michigan: | | | | | | | |
| Carl Levvin D* | 3,517,444 | 707,766 | 20.1 | 1,736,671 | 49.4 | 915,591 | 26.0 |
| Jack Lousma R | 1,772,925 | 473,204 | 26.7 | 591,463 | 33.4 | 558,754 | 31.5 |
| Minnesota: | | | | | | | |
| Rudy Boschwitz R* | 5,983,410 | 1,003,037 | 16.7 | 3,134,212 | 52.4 | 1,512,659 | 25.3 |
| Joan Growe D | 1,611,348 | 434,148 | 26.9 | 910,055 | 56.5 | 175,825 | 10.9 |
| Mississippi: | | | | | | | |
| Thad Cochran R* | 2,768,728 | 960,361 | 34.7 | 810,811 | 29.3 | 852,008 | 30.8 |
| William Winter D | 741,534 | 340,167 | 45.9 | 176,424 | 23.8 | 171,410 | 23.2 |
| Montana: | | | | | | | |
| Max Baucus D* | 1,239,892 | 651,999 | 52.6 | 274,530 | 22.1 | 258,982 | 20.9 |
| Chuck Cozzens R | 581,826 | 158,630 | 27.3 | 232,172 | 39.9 | 91,318 | 15.7 |
| Nebraska: | | | | | | | |
| James Exon D* | 888,505 | 511,113 | 57.5 | 166,628 | 18.8 | 159,250 | 17.9 |
| Nancy Hoch R | 585,231 | 74,125 | 12.7 | 259,679 | 44.4 | 180,669 | 30.9 |
| New Hampshire: | | | | | | | |
| Norman D'Amours D | 1,070,220 | 492,343 | 46.0 | 281,225 | 26.3 | 209,100 | 19.5 |
| Gordon Humphrey R* | 1,699,044 | 728,608 | 42.9 | 377,549 | 22.2 | 452,621 | 26.6 |
| New Jersey: | | | | | | | |
| Bill Bradley D* | 4,317,423 | 664,032 | 15.4 | 1,008,026 | 23.3 | 2,242,988 | 52.0 |
| Mary Mochary R | 965,782 | 40,350 | 4.2 | 313,446 | 32.5 | 192,120 | 19.9 |
| New Mexico: | | | | | | | |
| Pete Domenici R* | 2,638,991 | 783,545 | 29.7 | 802,434 | 30.4 | 842,677 | 31.9 |
| Judith Pratt D | 304,186 | 106,073 | 34.9 | 129,984 | 42.7 | 37,187 | 12.2 |
| North Carolina: | | | | | | | |
| Jesse Helms R* | 16,522,266 | 841,837 | 5.1 | 13,633,466 | 82.5 | 1,950,844 | 11.8 |
| Jim Hunt D | 10,031,502 | 833,101 | 8.3 | 6,655,776 | 66.3 | 2,217,038 | 22.1 |
| Oklahoma: | | | | | | | |
| David Boren D* | 983,553 | 4,241 | 0.4 | 362,057 | 36.8 | 480,773 | 48.9 |
| Will Crozier R | 31,380 | 0 | 0 | 3,815 | 12.2 | 4,400 | 14.0 |

## BREAKDOWN OF RECEIPTS OF 1984 SENATE GENERAL ELECTION CANDIDATES—Continued

| State and candidate | Total receipts | PAC Receipts | Percentage of total receipts | Individual receipts breakdown |  |  |  |
|---|---|---|---|---|---|---|---|
|  |  |  |  | $1-499 | Percentage of total receipts | $500 and over | Percentage of total receipts |
| Oregon: |  |  |  |  |  |  |  |
| Mark Hatfield R* | 822,875 | 376,693 | 45.8 | 125,027 | 15.2 | 248,332 | 30.2 |
| Margie Hendriksen D | 255,897 | 127,551 | 49.8 | 84,991 | 33.2 | 20,850 | 8.1 |
| Rhode Island: |  |  |  |  |  |  |  |
| Claiborne Pell D* | 745,270 | 210,392 | 28.2 | 208,636 | 28.0 | 272,365 | 36.5 |
| Barbara Leonard R | 164,275 | 33,850 | 20.6 | 49,000 | 29.8 | 45,750 | 27.8 |
| South Carolina: |  |  |  |  |  |  |  |
| Melvin Purvis D | 11,688 | 0 | 0 | 5,724 | 49.0 | 500 | 4.3 |
| Strom Thurmond R* | 1,921,179 | 529,473 | 27.6 | 881,679 | 45.9 | 401,000 | 20.9 |
| South Dakota: |  |  |  |  |  |  |  |
| George Cunningham D | 174,268 | 83,721 | 48.0 | 46,920 | 26.9 | 15,398 | 8.8 |
| Larry Pressler R* | 1,249,604 | 521,399 | 41.7 | 235,377 | 18.8 | 361,670 | 28.9 |
| Tennessee: |  |  |  |  |  |  |  |
| Victor Ashe R | 1,777,975 | 241,371 | 13.6 | 856,550 | 48.2 | 471,332 | 26.5 |
| Albert Gore D* | 3,166,007 | 783,940 | 24.8 | 1,028,870 | 32.5 | 1,061,453 | 33.5 |
| Texas: |  |  |  |  |  |  |  |
| Lloyd Doggett D | 5,958,005 | 802,929 | 13.5 | 2,502,414 | 42.0 | 1,906,783 | 32.0 |
| Phil Gramm R* | 11,298,924 | 1,477,601 | 13.1 | 4,479,284 | 39.6 | 4,139,143 | 36.6 |
| Virginia: |  |  |  |  |  |  |  |
| Edythe Harrison D | 496,124 | 82,817 | 16.7 | 138,333 | 27.9 | 150,799 | 30.4 |
| John Warner R* | 2,630,558 | 693,588 | 26.4 | 707,277 | 26.9 | 647,142 | 24.6 |
| West Virginia: |  |  |  |  |  |  |  |
| John Rease R | 1,161,862 | 178,269 | 15.3 | 232,818 | 20.0 | 265,706 | 22.9 |
| Jay Rockefeller D* | 12,093,549 | 533,322 | 4.4 | 532,896 | 4.4 | 714,850 | 5.9 |
| Wyoming: |  |  |  |  |  |  |  |
| Alan Simpson R* | 906,121 | 407,458 | 45.0 | 138,501 | 15.3 | 291,574 | 32.2 |
| Total | 148,369,264 | 27,778,186 | 18.7 | 58,435,751 | 39.4 | 37,879,045 | 25.5 |

*See footnote at end of attachment 2.

## ATTACHMENT 2

## SENATE—TRENDS IN CAMPAIGN CONTRIBUTIONS TO GENERAL ELECTION CANDIDATES 1974–84

Note.—Table shows the actual amount (in millions) received from each category each year, that amount adjusted for inflation in 1984 dollars, and the percent of total receipts such amounts represent.

| Receipts | 1974 | 1976 | 1978 | 1980 | 1982 | 1984 |
|---|---|---|---|---|---|---|
| Total receipts:* |  |  |  |  |  |  |
| Actual | $28.2 | $39.1 | $68.9 | $83.7 | $127.0 | $156.2 |
| Adjusted | $56.5 | $68.0 | $104.4 | $105.3 | $137.3 | $156.2 |
| Percentage of total | 100 | 100 | 100 | 100 | 100 | 100 |
| All individual: |  |  |  |  |  |  |
| Actual | $21.4 | $26.9 | $50.6 | $52.4 | $70.3 | $95.7 |
| Adjusted | $42.9 | $46.7 | $63.8 | $65.8 | $76.0 | $95.7 |
| Percentage of total | 76 | 69 | 73 | 62 | 55 | 61 |
| Under $100: |  |  |  |  |  |  |
| Actual | $10.6 | $11.1 | $29.2 | $20.7 | $22.9 | $36.0 |
| Adjusted | $21.2 | $19.3 | $36.8 | $26.0 | $24.7 | $36.0 |
| Percentage of total | 38 | 28 | 42 | 25 | 18 | 23 |
| Under $200: |  |  |  |  |  |  |
| Actual | $11.7 | $12.3 | $32.4 | $23.0 | $25.4 | $40.0 |
| Adjusted | $23.4 | $21.4 | $40.9 | $28.9 | $27.5 | $40.0 |
| Percentage of total | 41 | 31 | 47 | 27 | 20 | 26 |
| Over $200: |  |  |  |  |  |  |
| Actual | $9.7 | $14.6 | $18.2 | $29.4 | $44.9 | $55.7 |
| Adjusted | $19.4 | $21.4 | $27.6 | $36.9 | $48.5 | $55.7 |

## SENATE—TRENDS IN CAMPAIGN CONTRIBUTIONS TO GENERAL ELECTION CANDIDATES 1974-84—Continued

Note.—Table shows the actual amount (in millions) received from each category each year, that amount adjusted for inflation in 1984 dollars, and the percent of total receipts such amounts represent

| Receipts | 1974 | 1976 | 1978 | 1980 | 1982 | 1984 |
|---|---|---|---|---|---|---|
| Percentage of total | 34 | 37 | 26 | 35 | 35 | 36 |
| PAC's: | | | | | | |
| Actual | $3.1 | $5.8 | $8.9 | $15.9 | $21.8 | $28.1 |
| Adjusted | $6.2 | $10.1 | $11.2 | $20.1 | $23.6 | $28.1 |
| Percentage of total | 11 | 15 | 13 | 19 | 17 | 18 |
| Parties:* | | | | | | |
| Actual | $1.7 | $1.4 | $4.1 | $7.7 | $12.2 | $11.3 |
| Adjusted | $3.4 | $2.4 | $6.2 | $9.7 | $13.1 | $11.3 |
| Percentage of total | 6 | 3 | 6 | 9 | 10 | 7 |
| All other: | | | | | | |
| Actual | $2.0 | $5.0 | $5.3 | $7.7 | $22.7 | $21.1 |
| Adjusted | $4.0 | $8.7 | $6.7 | $9.7 | $25.0 | $21.1 |
| Percentage of total | 7 | 13 | 8 | 9 | 18 | 14 |

*Includes 441a(d) party expenditures on behalf of specific candidates.

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# PROPOSED AMENDMENTS TO THE FEDERAL ELECTION CAMPAIGN ACT OF 1971

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WEDNESDAY, JANUARY 22, 1986

U.S. Senate,
Committee on Rules and Administration,
*Washington, DC.*

The committee met, pursuant to notice, at 10:14 a.m., in room 301 of the Russell Senate Office Building, Hon. Charles McC. Mathias, Jr. (chairman) presiding.

Present: Senators Mathias, Warner, Stevens, Ford, Simon, and Gore.

Staff present: John B. Childers, staff director; John F. Rixey, Jr., majority counsel; William McW. Cochrane, minority staff director; Gerald W. Siegel, minority chief counsel; John K. Swearingen, director, technical services; Ann B. Cook, chief clerk; Carole J. Blessington, assistant chief clerk; Gerald Gereau, chief investigator; Dennis G. Doherty, auditor; Beth Cady, professional staff member; Waitus A. Dowless, professional staff member; Elaine W. Milliken, elections counsel; Harriet L. Robnett, elections deputy counsel; Jennifer J. Nelson, elections staff assistant; and John L. Sousa, elections minority counsel.

## OPENING STATEMENT OF SENATOR CHARLES McC. MATHIAS, JR., CHAIRMAN, COMMITTEE ON RULES AND ADMINISTRATION

The Chairman. The committee will come to order.

The Committee on Rules and Administration meets this morning in a second day of hearings that are revisiting an old familiar problem: the role of money in politics. Campaign finance reform has been receiving a good deal of attention, both in the popular press, and on the floor of the U.S. Senate.

When Mr. Boren, who will be testifying today, offered his legislation as an amendment last December, he gave a great many Members of the Senate an opportunity to express their concerns with the way in which campaigns for Congress currently are being financed.

That debate on the floor and the debate which has been ongoing among Members of both the House and the Senate suggest to me that positive steps can be taken in 1986 to enact campaign finance reforms. I know that witnesses are prepared to discuss both the problems in the current system and their proposed solutions to them. It is apparent to me from the range of the ideas that are suggested by bills pending before the committee that not everyone has yet come to any single agreement as to what the solution should be. But I do not think we can ignore the growing level of public concern with the issues, a concern that is certainly shared by very many Members of Congress.

One of the more dismaying features of American democracy, in spite of the increasingly larger sums that are spent on election, is that fewer Americans go to the polls and 46 percent of those eligible to vote in 1984 did not cast a ballot. This public apathy ought to concern us if it marks a lack of confidence in the electoral process and in Government itself. The high visibility of political action committees in funding campaigns may have intensified a feeling that Government is not responsive to individual citizens but only to those interests wealthy enough and organized enough to make their views known in Washington.

I probably owe it to the committee to restate my own bias at the outset of this hearing. I believe personally that we ought to fund Senate campaigns just as we now fund Presidential campaigns, which is from the public treasury. To those who would say that we cannot afford public financing at a time when we are attempting through radical means to cut the Federal deficit, I would suggest that the cost to the system of self-government will be far greater if we fail to enact public funding.

The Supreme Court has held that the expenditure of money in a campaign cannot constitutionally be limited unless the limits are imposed in a system of public finance. Public finance is the only way to solve the problem of excessive money in elections, since it is the only means that the Court has left us to limit overall campaign expenditures. Without limits, candidates will continue to raise ever increasing sums and to rely on large contributors to provide them.

It is already apparent that the emphasis on money in campaigns has created a situation in which Members of the Senate must spend far too much time in the effort of fundraising. The average cost of a winning Senate campaign in 1984 was $3 million. Fundraising therefore no longer begins in the election year, or a year or even 2 years before the election. It begins literally as soon as a Senator takes office. We pay a heavy price for the kind of system we now have, because we lose qualified men and women who financially cannot bear the cost of running for office. We lose public confidence in the institution of Government because of the perception that office holders are beholden to wealthy contributors. We cannot afford to pay this price much longer.

If the system is not working as it should, then we ought to change it. Although I believe public financing of elections remains the simplest and surest solution to the problems that we face, I welcome the testimony, ideas, and opinions of the witnesses here today who will tell us how they would address these problems. Clearly the time has come to complete the job of campaign finance reform that we began in the Congress 15 years ago.

Senator Ford.

Senator **Ford**. Thank you, Mr. Chairman.

I believe that during the closing days of the first session of this Congress, a great deal of concern was expressed by Members in the Senate about the financing of congressional election campaigns.

While there continues to be some disagreement as to whether candidates are forced to raise more and more money to keep up with the rising costs of campaigns, or whether the availability of more money pulls up the cost of campaigns, there is little dispute about the result. Campaign spending is at an all-time high and it has continued to increase with every election.

This spiraling rise in campaign spending and the impact of the related problems of raising large amounts of money should concern every one of us involved in the process.

To me, Mr. Chairman, it is encouraging that this committee is again taking the lead by making congressional election campaign finance the subject of this, its first hearing in our second session. I hope this hearing and those that will necessarily follow it will continue to build on the concerns expressed in the last session and provide us with an informed basis for Senate deliberation on the subject.

Mr. Chairman, I look forward to working with you and listening to the witnesses who will testify today.

The CHAIRMAN. Thank you, Senator Ford.

Senator Warner.

Senator WARNER. Mr. Chairman, I commend you personally and the ranking minority member for holding these hearings.

As you step down from a long and distinguished career in the U.S. Senate, I am hopeful that some of these reforms will be remembered as one of your many hallmarks of public service.

The CHAIRMAN. Thank you, Senator Ford.

Senator Gore.

Senator GORE. Mr. Chairman, I just want to say for the record that I agree with your statement, and I want to associate myself with your statement. And I am hopeful that 1986 will be the year of significant changes in campaign financing laws.

The CHAIRMAN. Thank you, Senator Gore.

Senator STEVENS. Mr. Chairman, I served on this committee at the time of the Campaign Reform Act that led to many of the things that the chairman has just indicated he would like to eliminate.

I say to my good friend that after the basic act was passed, the Supreme Court in the *Buckley* case held that Congress did not have the prerogative to limit the amount that an individual candidate could spend on his own campaign from his own resources. Some times I think the Court was wrong. Whether the Court was wrong or right, its decision is history now.

The real point that I am trying to make is is that as we assess the mechanisms that candidates use, both incumbents and nonincumbents, to raise money, we have to keep in mind that the Supreme Court has held that we cannot restrict—even in the way that we have already restricted raising funds from other than one's own sources—an individual's own expenditures of his own money or her own money in his or her campaign.

Under those circumstances, I intend to follow this series of hearings very closely and try to remind the Senate of the fact that it was campaign reform that brought about the very provisions that are being criticized now. There was a time when there were contributions in cash. There was no reporting of contributions in many States. And we brought about reporting. We brought about full disclosure. And we eliminated cash contributions in Federal campaigns. I think those reforms were successful.

And if the costs of campaigning have gone up, in my judgment, they have gone up primarily because of expenditures by candidates who are in fact spending their own money. I hope we have some witnesses who will discuss the amounts that have been spent by individual candidates of their own money in campaigns in this country since the Campaign Reform Act was before the Supreme Court.

I hope the Senate will review the testimony of our good friends here and others concerning what they believe should be done to reform the campaign finance laws, but I hope we will also keep in mind the history of past attempts to limit expenditures of one's own fortune in seeking election to the Senate.

The CHAIRMAN. I agree with the Senator from Alaska that we need to pay close attention to the witnesses here. And I celebrate with him the success that we have had under the law that was enacted by the Congress and was approved, that portions of it which were approved in the *Buckley* v. *Valeo* case.

My proposal at this time is simply to make those successful portions which now apply only to Presidential elections also apply to Senate elections. That is a Court approved system.

Now, the witness list as the committee has it, is Mr. Boren, Mr. Heinz, Mr. Mitchell, Mr. Stennis, to be followed by Mr. Synar.

I am wondering if that order is agreeable to the witnesses or perhaps Senator Stennis would like to—I see that Senator Stennis is indicating that that is agreeable to him so we will ask Governor Boren if he will come forward.

## TESTIMONY OF HON. DAVID L. BOREN, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator BOREN. Thank you very much, Mr. Chairman.

I appreciate the comments which you and other members of the committee have already made in introduction this morning of this subject matter. I want to again personally commend you for the leadership that you are showing in this area, not only this morning, but over a period of many, many years. And it is noted and deeply appreciated by the American people.

I also appreciate the committee's attention to the issue of campaign finance reform early in the session. The committee's swift scheduling of hearings certainly demonstrates your commitment and the commitment of the committee to work together for meaningful reform that can be accepted and passed by this Congress in time for the next election cycle which will elect the 101st Congress.

In the Senate 11 Members have joined together to submit to you S. 1806, legislation primarily aimed at addressing the explosive changes in the way in which our congressional elections are being financed. I am proud to have two members of this Committee, Senator Byrd and Senator DeConcini as cosponsors of this proposal, along with Senator Stennis, whom you have already recognized, who will testify this morning, and Senators Goldwater, Hart, Levin, Kassebaum, Rudman, Chiles, and Bingaman. I do have a statement from Senator Kassebaum, Mr. Chairman, and I would ask unanimous consent that her statement might be entered in the record of this hearing.

The CHAIRMAN. Without objection, so ordered.

[The prepared statement of Senator Kassebaum follows:]

### PREPARED STATEMENT OF SENATOR NANCY KASSEBAUM

Mr. Chairman, I very much appreciate the opportunity to express my thoughts on the important issue of campaign reform. The debate last December on the floor of the Senate, and the resounding defeat of a motion to table Senator Boren's proposal, indicate that most members of this body recognize the need for reform.

Our debate, in committee and on the floor, can provide the American people some insight into complex issues involved in campaign financing and political speech. Our debate can also start to convince voters that their voice and their contributions are not only important, but are weighted equally with other special interests.

I do not think either of the sponsors of the major proposals discussed today claim that their bill is the perfect solution to the many perceived problems. Both S. 1806, offered by Senator Boren, and S. 1891, offered by Senator Heinz, contain worthwhile provisions. Both would limit the growing influence of special interest political action committees. I support this overall objective. This committee's action can underscore for the American people our serious desire to reach that objective.

One of the ongoing changes in our political life is the inordinate and, I think, increasing importance of money. What concerns me most is that the steady increase in the amount of money spent in political campaigns has been accompanied by a steady decline in the quality of our public dialogue. I suspect there is a connection between those two trends.

While spending large amounts of money for an election may not be a bad thing, the way we spend the money can be very debilitating in a society that depends on shaping consensus from a diverse people with diverse and often competing needs. By playing to the demands of our mass media, we overload the demands of democracy and undermine our ability both to govern and to be governed.

A sampling of newspaper editorials from across the country provides ample evidence of the frustration felt by citizens who feel cheated by the access and influence of big-spending special interests. "The best money can buy" may be used with a grin when discussing baseball teams. It should not explain the reaction of citizens when asked about their elected officials.

There are many issues and problems facing this country and this Congress. I believe that among the most important and most fundamental is the question of how to return the election process to the average citizen voter. The debate today about various proposals is absolutely required if we are to preserve the basic democratic tradition of the United States. If we cannot take the first step in the battle against election apathy, we cannot hope to regain the respect of our constituents or restore the faith in our system. We should begin today to rechart our course.

Senator BOREN. A companion bill, H.R. 3799, has been introduced in the House of Representatives by Congressman Mike Synar, from whom you will hear this morning, and others in the House of Representatives.

For the past several years during the boom of PAC spending and contributions, it has become apparent to me that we must quickly take the first step in reforming and protecting one of the most fundamental parts of the democratic process, the election process itself. The statistics on the growth of PAC's are well known.

In 1974, there were just 600 political action committees that existed. The Federal Election Commission has reported that at the end of 1984 the number had grown to 4,009, an increase of 668 percent. Contributions of those organizations to Senate and House candidates have grown from $12.5 million in 1974 to $104.9 million in the 1984 elections.

It is frightening to consider the impact on the political system and the cost of campaigns, if PAC contributions continue to more than double every 4 years. By 1992, at that rate, the contributions would exceed $250 million.

Well, PAC contributions have increased almost tenfold. The cost of an average U.S. Senate campaign has increased from $609,000 to over $2.9 million in the past 8 years.

Clearly, when more money is pumped into the system, it ends up getting spent in the election process. The constraints of a Supreme Court decision, which you and others have already mentioned, keeps us from directly limiting the expenditures for congressional candidates' campaigns. With a division of opinion on the concept of public financing of congressional elections, which you have discussed this morning, I believe that the Congress can wait no longer in addressing the problem of PAC money.

This money which pours into campaign coffers at best distorts the view which Congress needs in dealing with comprehensive economic, social, strategic, and international issues. And at worst, it could corrupt the very fiber of our democracy. That is not to say that it is the fault of the PAC's entirely for this phenomenon. Clearly the Congress allowed for this system with the election law reforms of 1974. And the fact that part of this process began with a reform indicates again we have to proceed with caution in the steps that we take now.

Some PAC's do make a successful effort to educate their members and run their organizations on a grassroots basis. These, however, are the minority. There are many others that are in fact run by Washington lobbyists with little input from member contributors.

Studies show that contributors to individual candidates demonstrate much more political involvement and awareness than is the case for the average PAC contributor. Some groups admit that they form PAC's simply in self-defense because competing economic groups form them.

Much like the arms race, we are caught up in an escalating spiral of spending.

Mr. Chairman, I made several statements on my view of how the system has gotten out of hand. The Senate in 1984 received nearly a quarter of its campaign funds from PAC's compared to only 14 percent in 1978. The most startling fact is that in the last election cycle, 163 Members of Congress received over half of their campaign contributions from political action committees up from 98 just 2 years ago. Thirty-six percent of House Members had over half of their campaigns funded with money from single issue or single economic group PAC's.

As I mentioned earlier, campaign costs for winning a seat in the body, in this body, have risen by 385 percent in just the last 8 years. If the huge sums of money are there, whether by retaining the status quo system or through the proposal of Senator Heinz which would in fact increase the flow of money into the system, indiscriminately opening wide the coffers to national party funds, that money is going to be spent. The massive influx of funds has helped to fuel a mind-boggling trend which needs no further explanation to illustrate its dangers.

The dangers to the political process lie in this trend which hastens the day when Members of Congress will no longer depend upon individual contributions from their home States for their election efforts. Instead, they will be primarily dependent upon political action committees often directed and led by people outside their home States. They may be able, in essence, to have lobbyists in Washington host fundraisers and never even have to go back to their home States to raise the money essential for campaigns.

This raises the question as to whether the people back home can any longer be able to be said to have representation which gives first priority to their needs and their views.

In addition to the threat to the concept of grassroots democracy, the current trends also lead to further political fragmentation at a time when consensus building is much needed in problem areas like budget deficits.

It is hard to get Congress to act in the national interests when campaigns are more and more financed by groups which rate Members of Congress only on a narrow range of special interests. This bill will not solve all the problems. And I would be the first to say that it does not. It is a modest step in the right direction. It is not an extreme measure. It does not outlaw all PAC contributions. It does place reasonable limits on total PAC contributions. These limits will help to stop the rapid escalation of campaign costs. The formula, when applied, would roughly cut in half the amount of money the PAC's are now able to give to congressional candidates.

They should also help to assure that while PAC's may play a role, they will not provide grossly imbalanced support than individuals back in the Member's home State.

It is even-handed in that it applies equally to PAC's controlled by businesses, by labor union groups. Political activities by unions and by business corporations should fall under the same rules.

The bill does the following: One, it limits to $100,000 the amount a House candidate can accept from all political action committees in each election cycle. It raises the PAC limit by $25,000 if two or more candidates qualify for the ballot in the primary and the general election; in other words, if you have a primary contest or runoff contest. It limits Senate candidates to an amount varying with the population of their State, with the low of $175,000, $200,000 if you have two or more candidates in the primary, and an overall cap of $750,000 in the States where the largest amount would be authorized. The formula actually applies $35,000 times the number of congressional districts in a State with this outward cap on those States with a very large population.

It allows for an additional $25,000 of PAC money in the event of a House runoff election. It allows for an additional amount in a Senate runoff the greater of $25,000 or $12,500 times that State's number of congressional districts.

It lowers the current PAC contribution limit from $5,000 to $3,000 and raises the individual limit from $1,000 to $1,500. Right now, PAC's can give $5,000, individuals only $1,000. That's a 5-to-1 advantage, you might say, for the interest groups as opposed to individual citizens.

It closes the current loophole for conduit contributions through PAC's by requiring the candidate to count such contributions toward the limit imposed on political action committees. In other words, if a PAC has given $5,000, and then that PAC itself goes out and collects an additional $10,000 from its individual members, and that PAC hands over the contributions to the candidate, that will fall under the limits and would not be allowed.

It requires a disclaimer for PAC's that make media advertisements not authorized by a candidate in a Federal election. They must disclose that the advertisement is authorized and paid for by the committee and that its presentation is not subject to any campaign law of contribution limits.

This would put the people on notice if you had a so-called independent running advertising in a campaign, and that disclosure to the public will let the public know that this is being done outside the campaign finance and the law of limitations.

It allows for a candidate to be provided with equal time from broadcasting stations which voluntarily run advertising which subjects a candidate to negative advertisement through an independent expenditure by a political action committee and strengthens the definition of independent expenditure as well.

Mr. Chairman, there will have to be a technical correction to the bill, we are only applying that equal time provision to advertising which the station, of course, is obviously not obligated to accept. If a station wants to voluntarily accept advertising from a so-called independent PAC which attacks a candidate, then they must make available free time to respond to that paid advertising.

I mention strengthening the definition of independent expenditure. We have tried to look at areas of collusion. If the campaign committee of a candidate and the PAC committee happened to have the same media consultants and office next door to each other, if they are in fact consulting with each other, there is clearly an overlapping directorate involved that would no longer be considered to be independent.

The effective date, December 31, 1986, would affect the 1988 election cycle. While many of these provisions have been somewhat debated last month, when it was considered as an amendment, I am anxious to entertain any questions the committee might have about specific provisions of S. 1806.

Again, Mr Chairman, I want to thank you personally and the members of the committee for your commitment to this issue and to the very prompt attention that you have shown to it in scheduling hearings on this first full day that we are back in operation.

The CHAIRMAN. Thank you very much, Senator Boren.

Let me ask you, first of all, a question that may sound very simple, but it seems to me it is somewhat basic if we are going to attack this problem.

You have been the Governor of your State, you have been elected to the Senate, you have had wide political experience.

Do you think that this problem of money in politics that we perceive is one where the availability of money is giving rise to more expensive campaigns, or is it the genuine increase in cost of campaigns which is demanding more and more money?

Senator BOREN. Mr. Chairman, I think that it is the first. I think it is the availability of the money.

When you track the increase in campaign costs, campaign spending, they have far exceeded the rate of inflation in this country. So campaign spending has been rising at a much, much more rapid rate than has the rate of inflation.

You normally expect some slight increases along with the cost of living, the cost of paper, the cost of ink, even the cost of advertising time in general has gone up. But there is no way that you can go from the availability of $12 million from political action committees up to over $104 million in a decade and not have that reflected.

We are all human. If that money is easily available to us, in an election campaign, especially if you have some doubt about the outcome, human nature is simply going to lead that candidate to spend every available amount of money to make sure that he or she has done everything that they can do to win.

So I do think that the availability of the money is fueling it. And I would imagine that if you track the fees charged by media consultants and others who are part now of the political process, that you would find that they have been overjoyed at the availability of the increase of money because, undoubtedly, they are doing much better financially and their fee schedules have gone up incredibly during this period of time too.

The CHAIRMAN. In your statement you said that you felt that these large sums of money were being provided by committees that had very narrow interests.

Do you see any pattern to the way this narrow interest is focused? Does it go to members of certain committees in Congress? Is there a pattern or practice which could be viewed as an attempt to influence the views of the members who are running for election?

Senator BOREN. Mr. Chairman, I think the first thing that has to be said is that they go overwhelmingly, these contributions, from PAC's to incumbents. About 80 percent of the money is going to incumbents, on a 4-to-1 ratio. And I think there is a clear reason for that. Most of these PAC's are controlled by the lobbyists here in Washington. They want access to those that are in power now, that are in office now. Those who are merely going to be candidates, they may or may not be here. But they want access to the people that are here now. They want to be able to open those doors to committee chairmen and subcommittee chairmen and ranking members and others.

So it is very clear that the present system is operating with the money flowing into the hands of incumbents.

The CHAIRMAN. They are handicappers standing along the rail looking at the winners.

Senator BOREN. Absolutely. They are looking at the winners, and they are already considering that the incumbent is already there. Some of them may give to both sides, but they are probably at least going to give to the incumbent because he is there and he is going to be there for at least several months or 1 year or 2 years. Campaigns are starting so early now that people are soliciting money from PAC's maybe even 3 or 4 years ahead of the election. So they know that that person is going to be here on a committee that is important to them during that period of time. And obviously there are some committees that are most impacted, those committees that have the most economic clout.

I happen to serve on the Finance Committee. I would imagine that if you look at the Ways and Means Committee in the House and the Finance Committee in the Senate, you would see a very heavy amount of political action committee contributions, maybe three or four times the rate, going to members of other committees, going into those committees.

There are probably two or three other committees that I have left out.

Very clearly, there is a pattern in giving to incumbents and giving to people on key committees that affect questions like tax policies, for example, and economic policy. Giving to those that are in the power structure and the leadership in committees, the leadership in parties.

It is very clear that they are attempting to be well received by those that they think have the most influence, when they have the most likely opportunity to win. They look at polls undoubtedly too.

The CHAIRMAN. Do you perceive any subject matter that is particularly susceptible, legislative subject matter that is susceptible to a pattern?

Senator BOREN. Well, I think it is very hard to and I would——

The CHAIRMAN. Let me say as a preface to that, I think you were present at the last session when Mr. Phillip Stern testified.

Senator BOREN. Yes.

The CHAIRMAN. And he was indicating that certain committees seemed to get more of that money than others.

Senator BOREN. Yes.

I think undoubtedly, and it has been well publicized in the media, that we have already seen the cycle of consideration of the tax bill on the House side in the Ways and Means Committee. I have not seen all those figures. I have really just seen what has been in the media, but I would not be at all surprised that there had not been a very large amount of attention paid to the members of that committee in terms of their next election cycle during that period of time.

Now, I do not mean to imply that any particular person, lobbyist, political action committee, or anyone else comes up to a Member of the Congress and says, now, we want you to do something for us. Here is what we want you to do, and in return for that we are going to give you a $5,000 political contribution. I do not really think that that happens. If it happens, it could certainly be the rare case. And I think that the average representative of a business or a labor association would not engage in that, nor do I think the average Member of Congress would be at all receptive to that. It is more subtle than that, much more subtle than that. And I think it is the kind of influence that creeps in without really perhaps either party being fully aware of it.

But it is just human nature that if there is an interest group that has really been generous in its support, that that interest group hopes that it is going to be listened to.

You mentioned, Mr. Chairman, the amount of money that is going into campaigns. That is very alarming in itself. It has already been said too much time is being spent by Members of the House and Senate raising money, about the time it ought to be spent, listening to their constituents, studying the issues, and proving the quality of the legislative product here, taking time attending to our duties instead of raising money to get reelected.

But to me the source of the money is also equally alarming. I think it makes all the difference in the world whether or not the campaign contribution is coming from let us say an individual back home in your home State or your home district. That individual is going to weigh your total record. He is going to look at Senator Mathias, and he is going to say, you know, I may be in a certain business or profession, maybe he only votes with me half the time in terms of my own profession or business. But I think he is an honest man, I think he is a man of conscience, I think he is the kind of person in terms of his overall record we need in the Senate.

An individual citizen can weigh the overall record of a Member of Congress. Now, the chairman of a political action committee, or whatever group it is, whether it is the bankers, the realtors, the insurance people, a particular labor union, or whatever, that chairman of that PAC can only weigh the record of a Member of Congress in terms of the votes on that narrow issue, that narrow range of interest.

So, when you get all the campaign money that comes from people that are rating us only in terms of narrow special interests, in terms of those, instead of citizens, they look at our total record for the good of the country. I think you have a very unhealthy process as well.

The CHAIRMAN. Thank you very much.

Before we started the questioning, I neglected to inquire of the committee members whether they felt a time limit would be useful. I think personally 5 minutes per member might be a wise rule. Unless there is some objection, let us proceed on that basis. And I have consumed my 5.

Senator Ford.

Senator FORD. Senator Boren, I think we all visited with our constituents during the recess between sessions. Many of the business people are concerned about their economic plight. Most of the people I deal with are small business people, electricians, small construction, et cetera.

They feel the PAC is a vehicle for people from across the country who agree may pool their resources of small amounts and participate in a meaningful way in the campaign system.

I had an individual come to me one time and say he had spread out his contributions among the Members of the House of Representatives in Kentucky. He gave based on his ability, this one $15, that one $25, and so forth. But it did not make much of an impact and he was very disappointed.

With PAC's, these small business people who give a small amount can combine their contributions so they make some sort of an impact that is felt. You say that individuals back home give to you after looking at your overall voting record, and is going to assess you as an individual and that sort of thing.

What do you tell that small businessman who feels strongly that as an integral part of a group of people he can have some impact on matters affecting his business and his ability to make a better living than he could as an individual?

How do you go to him and tell him that while we do not want to eliminate your PAC, we are going to reduce the amount it can give while increasing the amount an individual can give.

Senator BOREN. Well, Senator Ford, I would say, first of all, my experience has been just the opposite. I have had the typical small business person, a typical individual, come to me and say we are with you all the way in the efforts to get this back to us at the grassroots instead of having some lobbyist in Washington run the situation.

I had over 200 fundraisers in small communities all across my State last time when I was attempting to raise funds for my reelection, and was not taking PAC money. And I cannot tell you how many, literally hundreds of people came up to me at these fundraisers and said I want you to know I am here because you are coming back here to us, you are coming back to Sulpher, OK, you are coming back to Guyman, OK, and you are meeting with us, the people that do not have a lot of money and a big lobbyist in Washington, and you are trying to run your campaign at the grassroots. I had many more that came to me on that basis. I have only had four or five people literally, my mail runs, I do not know, 100, 200 to 1 along those lines, that they want to have the individual input.

There are political action committees that really and truly are grassroots committees, and I know some of these that operate that way, where they really invite the candidates in, for example, and they have a forum and they listen to the candidates. And all the contributors vote who they are going to support and so on. That certainly is not nearly as unhealthy as the PAC that operates really with a lobbyist in Washington handing out the money where the people back home really never even know where it goes. Most of them do not know where it has gone.

I talked to a man one day, had just the opposite experience. He said what can we do to beat this local member of the legislature? He said he is just getting money; I do not know where he is getting money for his campaign because he is not very popular around here. And I said do you give to such and such a PAC, which happened to be his own business and professional PAC? He said, yes, I do. I said do you know that your PAC has contributed a large amount of money to this local legislator that you are against personally? He said no, you do not mean it. I said have you ever gone to your meeting? Have you ever read any report they give you back as to where your money goes? He said, no, I really have not, but I am going to start.

I just think that in terms of looking at the overall picture, I would not want to delegate out my right to vote to some committee. I happen to have been a lawyer and a teacher before I came here. I would not want to delegate out my right to vote to some lawyers' committee or teachers' committee. That is my own. I would not want to delegate out making a contribution either. If I want to give to Wendell Ford or Ted Stevens or Mac Mathias or Paul Simon, I want to make sure that it gets to them. I do not want to delegate out to some committee or some lobbyist.

And so I think that, you know, it would greatly help if there were people in this country who think they have to give to some interest group to be heard in Washington, this shows that we have reached a high watermark of cynicism in the country. They ought to think that we, as individuals, still can make a difference as individuals. So I really think it would be enhanced.

I certainly have a list of everybody that has ever contributed to my campaign. And when I go into a small county, I guarantee you, as I am riding through in the car, that person who has either rung doorbells, put out yard signs, or given me $10, their name is on the list of people who have helped me in the past in that county. And if they are giving through some PAC, their name would not be on the list.

Senator FORD. Do you make a distinction in your legislation between independent spending and negative attacks by independent groups?

Senator BOREN. Yes. Yes, sir.

The intent is, and there needs to be a technical correction on the bill. The intent is that if there is an attack, let us say the radio station or TV station carries, someone getting up and attacking the candidate. They do not have to give equal time to the candidate's committee in that case.

But if they receive advertising for which they are paid, and they voluntarily say we are going to run a negative ad attacking the candidate, then they have to give the opposing campaign, not necessarily the individual candidate, but let us say attack Wendell Ford with paid advertising which that radio station voluntarily accepts, then they have to give your committee equal response time.

Senator FORD. You include radio as well as and television.

Senator BOREN. Television and so on.

Senator FORD. How would your bill deal with a negative attack that some feel was actually beneficial to the candidate who was attacked?

Senator BOREN. Well, I think, you know, that is always a matter to be weighed. But I think you would still—if the person attacked was still—should still be provided with an opportunity to respond.

And I would hope that the broadcast people themselves, and I have made it clear to them, I hope they will come up with some suggestions on their own. If they are not enthusiastic about this provision, I am certainly open to some other ways we might handle this. But I would hope that they themselves would exercise some restraints. Since we are talking about paid advertising, they do not have to accept.

Senator FORD. I am exercising restraint and my 5 minutes is up.

Senator BOREN. I will try to exercise more, too. Thank you.

The CHAIRMAN. Senator Stevens.

Senator STEVENS. Thank you, Mr. Chairman.

Senator Boren, it is a good plan. I am not going to throw you any softballs.

You use in your campaign strategy individual contributions to broaden your support in your home State?

Senator BOREN. Yes, sir.

Senator STEVENS. So this bill that you have introduced would actually increase the amount that you could raise from your individual contributors, is that not right?

Senator BOREN. I do not know if it would increase it or not.

Senator STEVENS. You increase the limitation or individual contributions.

Senator BOREN. I suppose in that sense that it could, yes.

Senator **Stevens**. You have been able to raise your campaign funds without any increase in that, have you not?

Senator **Boren**. Yes. And I would say that——

Senator **Stevens**. Then why should we increase individual contributions because you think PAC's are bad?

Senator **Boren**. Well, I think that, for one thing, to try and get a more fair relationship. Right now the PAC can give $5,000 and an individual can only give $1,000. And frankly, Senator Stevens, it was a compromise entered into among several of the cosponsors and others that said, well, we first talked about setting the limits exactly the same, maybe making them both $1,000, keeping it where it was. Some thought that was too extreme. I would just say it is a compromise. There is nothing magic about that figure.

There was a feeling that we had not adjusted the individual contribution for inflation in a number of years. PAC's could give five times as much. We would change it in a way to recognize inflation and put it at about a 2-to-1 ratio instead of a 5-to-1.

Senator **Stevens**. My last campaign cost me over $1 million. The first one I ran in 1960 cost around $35,000.

You imply that it was the availability of money that made those campaign costs go up. Do you really believe that?

Senator **Boren**. I think to a large degree that it has. When money is made available, the market understands that.

In other words, right now it is sort of like buying a house. You are in a part of the country, like my part of the country, where agriculture and energy are in trouble. Market value is down right now.

But if you are back during the boom when all this money was available, the market price for housing went up. And I would suggest the very same thing happens to media costs and consultant costs and all that.

Senator **Stevens**. How many days did you have to charter jet airplanes, you know, in order to fly around your State?

Senator **Boren**. Oh, quite a few days. And probably more so because I did not use a jet, I used a twin-engine plane. I know your distances are so great——

Senator **Stevens**. How many days do you really have to be away from home when you are campaigning?

Senator **Boren**. Oh, an awful lot. I would say this, that going back to the grassroots to raise the money probably increases the amount of traveling. No doubt that it does.

Senator **Stevens**. That is what I was going to get to just now.

You say that your bill is designed to reduce the amount of time that we spend raising funds, and yet it appears to me, as a Senator who has seen expenses go up so dramatically in my career, that you would increase the amount of time I would have to spend raising money.

Senator **Boren**. Well, let me put it this way. I think that you can easily combine your campaigning with your fund raising. And this is exactly what I did. And I would suggest to you that——

Senator **Stevens**. Well, how many millionaires do you have in your Indian villages? I do not have any.

Senator **Boren**. Well, we do not have very many left.

Senator STEVENS. You've got a lot in Oklahoma though, and that is why you can finance your campaigns the way you do.

Senator BOREN. Well, if you would look at my campaign contributions and where they come from, they come from, I do not know, 5,000 or 6,000 people. We had over 254 fundraisers and many of those fundraisers were very much the small donations.

I would say this, that I think if we reach the point in time in which you could raise most of your money, and there are people raising half or more of their money, from four or five fundraisers here in Washington, DC, run by various lobbyists around town, that is going to be a tragedy, if you do not have to go back. We ought to have to go back to our home States. That is where we ought to be campaigning. That is where we ought to be raising our money.

Senator STEVENS. Well, will not your bill increase the influence of individual wealthy people on political campaigns?

Senator BOREN. I do not think so at all.

Senator STEVENS. It does increase the amount they can give. Husband and wife could give——

Senator BOREN. It does not increase the amount. If you go back when the law was passed in 1974, and you look at what $1,500 is now compared to what $1,000 was then, it does not increase it.

Senator STEVENS. I am saying that still it would increase the influence of the wealthy people in this country on political campaigns.

Senator BOREN. I think it will decrease the influence on balance of lobbyists here in Washington giving half or more of their money to 163 Members of Congress, and increase the people at the grass roots of all economic levels if we have to go back home to raise that 50 percent instead of raising it in Washington.

Senator STEVENS. Did you ever look at the number of $1,000 personal contributions and how many of those go to incumbents? I suggest to you that the large contributions from individuals also go to incumbents. I do not think it is a valid point to say PAC money follows incumbency. It is large money that follows incumbency.

Senator BOREN. I think, Senator Stevens, if you look at that, you will find that the large—take the $1,000 or $5,000 contributions, look at the proportion going to challengers versus incumbents, that it will be a much lower proportion going to incumbents than is the case of the 80 percent of the money coming from PAC's incumbents. I think it will be very significantly different. So I think it would be the——

Senator STEVENS. Well, my last question would be—and I see the Chairman has got his gavel up there—does your State allow contributions from corporations to statewide candidates that are running for State office?

Senator BOREN. I cannot answer that question as to whether or not—not, of course, to Federal because we are under the Federal rules. It has been too long since I looked at that.

Senator STEVENS. I would urge you to take a look at that and the committee too.

My State does. And the level of campaigning costs reflects the expenditures the Governor spends, the lieutenant governor spends, the people that are running for key Senate seats and the State legislature spends. They are allowed to take contributions from corporate sources with reporting and full disclosure. It is a good law in Alaska, really, given that the corporate contributions are permitted in the first place.

But your bill does not take into account at all the level of spending in terms of campaigning for other offices on a statewide basis in the State, does it?

Senator **Boren**. No. We are attempting only to deal with the Federal question. There is such a difference of State laws regarding State finance questions that I think it would be difficult. There are a lot of other things this committee may want to address. We have not tried to solve all the problems.

The Chairman. Your time has expired, Senator.

Senator Simon.

Senator **Simon**. Thank you, Mr. Chairman. And, Senator Boren, just a—not a question but just a very brief statement.

First of all, the other members of the committee may not be aware Senator Boren has been designated by Senator Byrd to head a Democratic task force just to look at this whole question.

My own feeling is that we need something significantly more sweeping than your piece of legislation. I am a cosponsor of Senator Mathias' bill.

I think we have to recognize the public is being gouged under the present system of financing campaigns. And if we can move to a system similar to that we use at the Presidential level, where people just check off, and then both candidates, two major political parties, receive flat amount of money that people voluntarily provide. I think the public is going to be protected much, much more than they are right now. And I hope we can move in that direction.

But, in any event, Senator Boren is in a very key position, Mr. Chairman. I think you were discussing it. I am not sure you are aware, Mr. Chairman, that Senator Boren has been designated by Senator Byrd to head a Democratic task force to look at this whole question of how we finance the campaigns. So I hope—we look forward to your leadership and working together with our committee.

I hope between your task force and this committee that we can come up with something substantial and solid and make a real contribution in what is a major scandal in the way we operate our Government.

Senator **Boren**. Mr. Chairman, just a brief conclusion to Senator Simon. I appreciate the comment, and let me say, Mr. Chairman, I mentioned this morning suggestions, as you have mentioned in others.

I certainly do not pretend this is a full solution. I offer this bill on behalf of the 10 other cosponsors merely as an important first step. I hope that this is the very least we will do this year and that we will not let another election cycle pass without doing something meaningful. And I would be delighted if we can strengthen what I propose, broaden it, have a bigger consensus package that we can come out with for campaign reform. I would be delighted. And I look forward to working with you, the chairman, and all the members of the committee, toward that end.

I just hope that we do not do anything less than what I have proposed here. If the committee comes forward with suggestions to do more, including this and other matters and other proposals in a comprehensive package, I will be delighted. But I just hope we will not wait. We just cannot keep waiting until after the next election. And I, with the chairman's leadership and the other members of the committee, I am just very hopeful we will be able to come out with a meaningful reform.

Senator SIMON. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

I am sure the members have other questions but, in view of the fact that other witnesses are waiting, I am wondering if we could submit any further questions to Senator Boren in writing and ask him to respond for the record.

Is that agreeable?

Is that agreeable to you, Senator Boren?

Senator BOREN. Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you.

[The questions and answers referred to follow:]

### QUESTIONS SUBMITTED TO SENATOR DAVID BOREN AT CAMPAIGN FINANCE REFORM HEARING

I have a series of questions concerning the ways in which S. 1806 should be interpreted. I believe your answers will be important to the Committee's understanding of your proposal and also important in implementation if this bill is enacted.

A major feature of legislation is the limit imposed on the aggregate amount of PAC contributions to a candidate. In the Senate, for example, the range is from $175,000 to $750,000 and that limit is for an entire election cycle, both primary and general.

1. The bill provides that no multicandidate committee shall make contributions to any candidate and his authorized political committees which when added to previous PAC contributions would exceed the aggregate limit for that candidate.

The language suggests that the multicandidate committee and not the candidate committee is to be held responsible for heeding to the aggregate PAC limit. Is that your intention?

Isn't the recipient candidate committee in a better position than the contributing PAC to know the amount of PAC funds on hand?

Do you think the legislation permits a finding of a violation by the recipient candidate committee? If not, should it be amended for that purpose?

2. Could a candidate committee conditionally "accept" PAC contributions? Would it be allowed without penalty to return excessive contributions when it discovered the overage?

Or could the PAC suggest that the contribution would constitute a gift to the candidate's favorite charity if it turned out to be excessive? Would that circumstance avoid a violation?

What would constitute *"acceptance"*? Just when during the process of giving and receiving a contribution does an "excessive" contribution become a violation of the Act?

3. Section (d) on page five of S. 1806 provides for additional regulations of multicandidate committees when they make independent expenditures advertising their support for or opposition to a candidate for federal office. They would be required to include notices in television commercials and newspaper advertisements advising the audience that the PAC is not subject to campaign contribution limits.

Would you discuss this provision and explain how it would improve the current campaign finance process?

It would take about ten seconds to deliver this disclaimer. Would this requirement in effect prevent PAC's from making ten-second radio political spots?

4. Another section of the bill is also concerned with independent expenditures. Section (h) on page 8 provides that certain contacts with the candidate or the candidates professional consultants constitute "cooperation or consultation" and therefore preclude independent expenditures by the person or the employer of the would-be independent expendor. An individual or a committee staff member who advised the candidate in the primary or the general election or who retained the same pro-

fessional firm employed by the candidate would be cooperating or consulting with the candidate and therefore could not make independent expenditures on his behalf.

First, let me ask whether the person having these kinds of contacts would also be precluded on this basis from making independent expenditures in opposition to the candidate's opponent?

Second, would such a provision require greater vigilance on the part of the Federal Election Commission?

If there should be a proliferation of independent expenditures because of these PAC limits, how effective do you think this provision would be in stemming that growth?

5. Section (c) of S. 1806 has been referred to as the "anti-bundling" provision. Under current law, an "earmarked" contribution directed to the candidate through an intermediary or conduit is treated as a contribution from the person making the contribution. Section (c) proposes to treat as earmarked contribution delivered through an intermediary or a conduit as a contribution made by the intermediary or conduit and by the contributor as well. Would you please discuss the effect of this proposed change with respect to the following circumstances:

(a) Would you comment on the meaning of "intermediary" or "conduit" and describe how this section is intended to be applied? For example, does the characterization of "intermediary" or "conduit" attach to any individual or representative of a political committee or organization who delivers to a candidate or other political committee the contribution of another person?

(b) Another example involves an individual, who already has made maximum contributions to a candidate and now holds a fundraiser at his or her home. Guests make out checks to the candidate's principal campaign committee which amount to $15,000. These checks are delivered by the host or hostess.

Has the host or hostess now made a $15,000 contribution in excess of the limits?

(c) If a club, which has not qualified as a political committee and has not made a contribution to the candidate, sponsored the fundraiser and delivered to the candidate's committee the $15,000 contributed by the guests, would the organization be required to register as a political committee under the Act? Does the organization's delivery of the $15,000 in checks from guests constitute an excessive contribution in violation of the Act?

6. Have you considered whether it would be beneficial to provide for some exceptions to the aggregate PAC limits proposed—for example, would it be worthwhile to consider an amendment that would lift the aggregate PAC limit under circumstances where a candidate's opponent spent extraordinary amounts of his or her own personal funds?

## ANSWERS BY SENATOR DAVID BOREN

(1) (a & b) The burden of policing this provision cannot easily rest on the multicandidate committee as they cannot know when or if a candidate has reached the maximum PAC ceiling. It must be a function of the candidate's committee which will know when the limit is reached. The intention is clearly that no candidate for a congressional office can accept more than the specified aggregate limit. It seems to be an interpretive discrepancy that can be corrected.

(c) Assuming that the provisions were changed to make the candidate's committee responsible for rejecting PAC contributions over the maximum ceiling, the current penalties provision of the FECA could appear to cover such a violation. I would, however, suggest that a re-evaluation of this section would be an appropriate review of the Committee.

(2)(a) It was not the intention of the sponsors to allow a candidate's committee to conditionally "accept" a PAC contribution. As long as a check that was received was not deposited in the account of a candidate's committee and then returned to the PAC, no apparent wrongdoing on the part of the candidate's committee is assumed. A candidate's committee cannot prevent itself from receiving "excess" PAC contributions above the maximum ceiling. It is when the candidate's committee—which has the knowledge of total PAC receipts—deliberately accepts and deposits those funds that goes against the spirit of our bill.

(b) It would not appear to be a violation of any law of which I am aware for a multicandidate committee to make a charitable contribution on behalf of another person, whether that person be a candidate for public office or not. However, the intent of the bill is for any "excess" contributions to be returned. At that point, should a PAC desire to redirect those funds to another candidate or to a charity on behalf of a candidate, it should be done after the contribution is returned to the PAC with a notice that it cannot be accepted.

(c) Acceptance of a contribution would be the endorsement and deposit of that contribution. The receipt of a contribution is considered when it is physically received through the mail system or in person by an authorized agent of the candidate's committee. When the candidate's committee has determined it has received the maximum aggregate limit of PAC contributions, there would be no incentive to receive contributions that could not be deposited or put to use of the candidate's committee. But only when the funds are intermingled (deposited) with other funds has the spirit of our legislation been violated.

(3)(a) The intention of including a mandated "disclosure requirement" on all public advertisements by a multicandidate committee on behalf of a federal candidate is to let the viewer/voter know who is paying for an unauthorized advertisement. It will remind the voter that there is no limitation on this type of contribution, as it is independent of the candidate's committee. Candidates must now provide a disclaimer on all advertised material which they authorize and pay for, so it only seems equitable that other political advertisers be required to likewise inform the voters as to who is saying what about who.

(b) The legislation does not require nor is it implied that the disclaimer is to be read on television but would apply to radio. As radio advertisements for candidates require reading of a disclaimer, it would also be required for multicandidate committees. Indeed, the disclaimer we propose is longer than the current candidate's committee disclaimer. The requirement would indeed seem to serve as a disincentive for short independent radio spots. But, as PAC's will likely experience an excess of funds from being unable to contribute as freely to candidates, I am sure they would not be financially disadvantaged from having to purchase more lengthy radio time for independent expenditures.

(4) (a) Nothing in the bill would or should be interpreted to keep a person from making independent expenditures on behalf of themselves or their interests—whether personal or for an organization. However, the purpose of tightening the definition of "independent expenditure" is to alleviate current or possible exceptions by persons or firms who coordinate or consult directly with the candidate or the candidate's committees. In that respect, such an expenditure is not in fact "independent" and should not be allowed to be considered a free expression, which the *Buckley* v. *Valeo* case stated of independent expenditures. By virtue of such consultation and collusion, I find it wrong to allow any expenditure from those involved to be "independent".

(b) Acceptance of my provision dealing with independent expenditures could assume that more vigilance by the FEC would be necessary, as well as the ability of opposing candidates having the additional ability to call such violations of law to the attention of the FEC and the voters.

(c) There may be the possibility of increased independent expenditures as a spinoff to S. 1806. However, I would far rather see disclosed and disclaimed independent expenditures that would be more limited as in provision (h) of S. 1806, under what I see as clear and strong constitutional barriers to going any farther. In my opinion, independent expenditures which are most effective are those that are broadcast by radio or television. Persons reading pamphlets or junk mail from many groups can be more judgmental of such advertisements. The other provisions, in my bill, the anti-bundling provision and the response time provision, would seem to close off avenues of abuse that are currently used to distort our election process.

(5)(a) As you all know, bundling is already defined in federal election law. A conduit or intermediary is one who—while not an official of a candidate's campaign—takes contributions and delivers them to a candidate or campaign official. Current law says such a conduit MUST disclose that they have done so to the Federal Election Commission and that such contribution will be counted as a contribution from the person writing the check only. S. 1806 would make illegal this practice of independent committees, national parties, or individuals, who—after having already "maxxed out" in contributing to a particular candidate—must count such "bundled" contributions toward their contribution limits as well. As current law is interpreted by the FEC, it is a violation of law for a national party, a political action committee or John Q. Public to make a bundled contribution without disclosing that activity to the FEC. Should any of those entitles do so under S. 1806 after having contributed the maximum allowable amount to a candidate, it would also be a violation of the law.

(b) With the example you give, the practice I have followed in the past and a way to keep the fundraising host from having to make disclosures to the FEC would be for the guests to leave their contributions with a campaign official who attends the function as well. I assume by your example that the candidate is, in fact, physically at the function. Surely, most candidates don't go to a fundraiser alone without having a campaign official with him or her. And, should guests plan to make out a check to the candidate at a later date, I usually had my campaign treasurer give them a pledge/campaign card and return envelope that could be sent to my campaign office or post office box.

(c) My bill does not speak to the registering of clubs as political committees. I would assume that if the club were to be required to disclose such a contribution under current law, that would constitute their meeting the qualifications of being a political committee. The club cannot expect the convenience of acting as a political organization without following the rules of the game. The language of my bill clearly states that the same kind of requirements that mandate disclosure of bundled contributions must also require counting such contributions toward the limits on the conduit. This is not however an unfair barrier as the club, committee or party has every right to truly urge "grassroots" involvement by urging their members to make direct contributions to a certain candidate.

(6) I have not considered such a raising of limits on the PAC ceilings provision of the bill. The previous decisions by the Supreme Court do not allow us the convenience of setting expenditure limits. If it did, my bill would be in much different form than what the committee is studying.

The CHAIRMAN. The next witness is the distinguished Senator from Pennsylvania, Mr. Heinz.

## TESTIMONY OF HON. JOHN HEINZ, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator HEINZ. Mr. Chairman, thank you and members of this committee for the opportunity to testify before the Rules Committee.

I am here to testify in support of S. 1891, the Comprehensive Campaign Law Reform Act of 1985, which I introduced last year, along with my colleague, Senator Laxalt and Senator Lugar.

The bill, S. 1891, differs from some of the other proposals before you today. I believe, however, that there is a consensus on the spiraling costs of running for public office as being a major source of many of the problems which concern us. The fact is that campaigns, the cost of which are set by the prices the vendors continue to charge and increase, simply cost too much.

Let me state at the outset my own view of the matter. I believe that campaign finance should be based on voluntary contributions with full disclosure. I firmly believe in the right of individuals, and individuals associating in groups, fully to participate in the political process and to support their political preferences premised upon the public's absolute right to know who is contributing to each campaign and the extent of that contribution.

Mr. Chairman, in my view, Americans are fully capable of judging for themselves how that support, and where it comes from, should affect their view of the candidates. Only through such full disclosure can we achieve the free and unfettered political expression in an open political process in which informed voters make their own choices.

Recently, concern has been focused on the sources to which a Federal candidate, particularly an incumbent Senator or Member of Congress, may turn to pay the skyrocketing costs of political campaigns. And special attention, as Senator Boren has just illustrated, has been directed to the role played by political action committees or PAC's.

What I think has not been understood, or at least imperfectly understood, is that the growing role of PAC's is, to a significant extent, a result of restraints placed by the campaign law on national, State, and local political parties. To me it is simple arithmetic. Campaign costs continue to grow; the support that parties can give is strictly limited by statute to a maximum dollar amount. As the cost of campaigns go up, the percentage of funding from nonparty sources, such as PAC's, must grow because, under current law, party support cannot.

Mr. Chairman, I would like to introduce into the record some statistics that I think may shed a little light on this matter.

Looking at the two parties individually, first the Republicans and then the Democrats, and speaking only of incumbents, because a lot of the discussion has focused on incumbents, Republican Party candidates who ran, the incumbents in 1984, received 70.8 percent of their financial support from individual contributions; 21.4 percent came from PAC's, and 6.3 percent of Republican incumbents came from party committees.

For Democrats, the—again these are just the incumbent Democrats—62.3 percent came from individual contributions; 28.9 percent came from PAC contributions; 3.3 percent came from party contributions.

Republicans do better with individual contributors than Democrats. Republicans take less money from PAC's than Democratic incumbents, and the Republicans do better from party committees by 6 percent versus 3 percent support from party committees than Democrats.

While there are differences, it is the similarities that are striking. Whether you are a Republican or a Democrat, you get no more than somewhere between 3 to 6 percent of your campaign financed by party committees, be they State, local, or national. And be you Republican or Democrat, on average you get somewhere around 20 to 30 percent of your money unless you do not take any, like Senator Boren, from the collection committees. And most candidates get by far most of their money from individuals, anywhere from 62 to 70 percent on average.

S. 1891 would address this situation by loosening the arbitrary restraints on participation through political parties.

First, it raises limits on party contributions to candidates. The Senatorial Committees which are headed by Senator Mitchell and myself may directly contribute no more than $17,500 to any candidate. This bill would raise that to $30,000. State party committees, currently limited to $5,000 per candidate, would be able to contribute $15,000 to each.

Second, it removes the limits on the amount party committees can spend on behalf of their House and Senate candidates, the so-called coordinated expenditures. The parties, State and national, should be able, in my judgment, to spend all the funds which they can raise on behalf of their candidates so long as those contribution sources are fully disclosed.

In the last year, the courts have removed the limits on what an independent multicandidate committee—in other words, a PAC—can spend to promote a candidate so long as it acts independently. Many of the practices which have generated concern in this committee, in the Congress and in the Nation at large can be traced to the expansion of independent expenditures accountable to no candidate or party. Eliminating the political parties' coordinated expenditure limit would put political party committees on a par or at least give them equality with these other multicandidate committees and establish the parties as the major support mechanisms for their candidates.

Mr. Chairman, I would note that S. 1891 does not remove the current restrictions on funding sources for candidates, such as the prohibition on corporate and labor union contributions. It does not increase the individual contribution limit that Senator Boren's bill does from the current $1,000.

To encourage party building activities, S. 1891 would exempt from the definitions of contribution and expenditure those contributions used to defray the administration and solicitation costs of political party committees. Importantly, such exempt donations, not reportable currently under existing law, under our bill would be reported semiannually to the FEC.

Also to encourage party building, our bill would permit the national party committees to provide an unlimited supply of campaign materials to party workers working on behalf of candidates. Under current law, payments by State and local party committees for these items—and we are talking about pins, bumper stickers, yard signs—need not be allocated to the candidates. This legislation merely extends this exemption to the national party committees. Similarly, this bill would allow national committees to provide unlimited assistance to candidates for registration and get out the vote drives. The 1979 amendments to the Campaign Act, in a welcome improvement, extended to the State parties the ability to assist candidates through such efforts. This ability, in our judgment, should be given to the national party organizations as well.

Mr. Chairman, in the interest of time, I will skip over the last several paragraphs in my statement and only note that these paragraphs describe some of the changes that our bill would make with respect to the public financing of Presidential campaigns and to provide for certain procedural safeguards for proceedings before the FEC, but that is really not the major thrust of the bill. For the most part, Mr. Chairman, S. 1891 is an effort to restore to both of the national political parties a measure of the importance which they seem to have lost over the last decade.

Unlike some others, I do not believe that PAC's or other such groups bear the major responsibility for this decline. As I stressed earlier, I think the reverse is more likely, that it is the decline which has increased the importance of PAC's.

Those who are concerned about the role of PAC's should share with me and the other sponsors of S. 1891 the conviction that strengthening the national political parties is a step in the right direction.

The purpose then of S. 1891 is to provide more, not less, freedom to participate meaningfully in the political process. The courts have ruled in several major decisions that participation in that process and contributing to the candidate of one's choice are basic and essential rights guaranteed to every American by the Constitution.

Mr. Chairman, I think that all of us here share a strong belief in the tradition of the two-party system and in our heritage of voluntary political participation.

I am not here to tell you that S. 1891 is perfect. It does not contain all of the answers to the problems and pressures of running for office in a complex and oftentimes what must seem both to the candidates, the incumbents and the voters a chaotic democracy. But I do believe that the approach embodied here is one of the most consistent with our heritage and with our values.

Mr. Chairman, I would ask that a copy of the section-by-section analysis of S. 1891 be included in the record at the conclusion of my testimony.

The CHAIRMAN. Without objection, it will be.

Senator HEINZ. And I am prepared to respond to any of your questions.

The CHAIRMAN. Now, one feature of the bill, as I understand it, is the provision to allow political parties to accept unlimited amounts of funds from anyone for the defraying of overhead expenses and solicitation costs, is that right?

Senator HEINZ. Mr. Chairman, that is basically correct. That is right.

The CHAIRMAN. And solicitation costs would be mass mailings, that kind of thing?

Senator HEINZ. Yes, Mr. Chairman.

The CHAIRMAN. And they would not be considered to be ordinary contributions?

Senator HEINZ. They would not be considered contributions through a so-called—they would not be subject to the usual FEC definition of Federal contributions.

They would, however, and this is a key point to remember, they would, however, for the first time become reportable. Right now, such contributions in fact are legal. They are being made, they are being used, and they are not being reported. And I would refer you to the January 20 edition of the Wall Street Journal where the one party committee—in this case it happened to be the Democratic National Committee—says that they already finance a substantial part of their overhead expenses with undisclosed donations from labor unions, corporations, and wealthy donors.

A Democratic spokesman, to continue the quotation, defends this on the grounds of the party's activity to support State candidates in States where such money is legal.

The CHAIRMAN. As you suggest, your proposal is really not that novel. Something very close to that is happening at the present time.

Senator HEINZ. It is a reform proposal, Mr. Chairman, because right now a lot is happening that nobody knows about, and it should be out on the table, out in the open. It should not be hidden from view.

The CHAIRMAN. Both management PAC's and labor PAC's, have overhead expenses of their own. PAC's do not just happen. Somebody has to make it happen. And that means there has to be a fund raising director, an administrative director, and there have to be secretaries, and that means there has to be an office, there have to be office expenses. So all of these administrative costs are now absorbed in many cases by either the corporations that foster them, or by the labor unions that foster them.

So unions and corporations are indirectly making a kind of a contribution of the sort you are suggesting.

Senator HEINZ. In my view, Mr. Chairman, all of that should be disclosed. To the extent it is not, it ought to be.

The CHAIRMAN. But what flows from this? We always have to think of what the downstream effect is.

Does that not mean that we then have repealed, at least in part, the prohibition against corporate and union spending in Federal campaigns?

Senator HEINZ. I do not think so, Mr. Chairman. Because we do not seek to tamper with that part of the law. What we seek is to make sure that what is now "soft" money, what is now undisclosed and untraced, and spent for a variety of purposes be disclosed. Right now it is not.

The CHAIRMAN. Thank you very much, Senator.

Senator Ford.

Senator FORD. I think I understand what the Senator is attempting to do in S. 1891. But, if party committees are allowed to spend unlimited amounts in support of candidates, as you propose, would not fund raising increase greatly?

Senator HEINZ. Party fund raising efforts would increase. I have no doubt. And if one of the reasons for trying to reform our election laws is to free candidates, be they incumbents or challengers, the people running for open seats from the burden of having to spend a lot of time raising money, and it is a lot of time, particularly if you are from a large State, such as Pennsylvania, New York, California. I do not know how those Californians ever get back to Washington. This will help alleviate the pressure on individual candidates for raising money.

Senator FORD. There are rumors, I am not sure how true they are, that many prospective candidates are coming to Washington to visit with those in power who have the ability to raise funds. They want an opportunity to run, but want to know how much money they receive from Washington. When such support is forthcoming and a candidate becomes targeted by the opposite party, he or she is placed in the position of having to raise more money than ever before in order to fend off the opponent's party's spending, not just the fund raising ability of the opponent.

Senator HEINZ. What you are describing, as I understand it, Senator, is a situation where one party has decided to strongly support a candidate and the other party has not.

Senator FORD. No, what I am describing is the situation where the incumbent is supported by his party, but the other party targets him and the result is pressure to increase campaign spending. Also, there is pressure by the party committee to spend money on activities that do not have to be reported. That national party committee that has the money can spend practically all it wants to on a targeted race.

Your national party has assigned its ability under 441(a)(d) to pay 2 cents times the voting age population of a State to the Republican Senate Campaign Committee, is that not correct?

Senator HEINZ. Right.

Senator **Ford**. So the Republican Senate Campaign Committee has the whole 4 cents times this and the national party and the State party has spending authority under the law; it's all assigned to the Senate Committee.

Senator **Heinz**. Well, not to put too fine a point on it. The essence of what arrangements have been made between the Senate Campaign Committee for the Republicans or, for that matter, Senator Mitchell's campaign committee, is that there is a certain amount of responsibility granted to national parties. And whether that responsibility vests in the RNC or the Senate Campaign Committee for Republicans, or we enter into an agency agreement with the RNC to discharge some of their other responsibilities does not detract from the central fact, which is Federal law strictly limits under the formula 4 cents per voting age person times the formula the Senator from Kentucky is very familiar with. There is a strict artificially low limit. And it drives candidates through having to spend inordinate amounts of their own personal time raising money.

Now, if we do not think—I will be the first to say if the judgment of the committee is that everything is fine with the political financing system, that people are not spending too much time raising money, that there is no problem with the existing system, then I am willing to let my bill go away, if that is everybody's judgment. But I do not think that is the judgment of my colleagues and, for that matter, this committee.

I think we need to get down to cases and get practical and figure out something that does something about it.

Senator **Ford**. Well, is it not true that you could give all 34 incumbents and challengers the maximum amount allowed under the law from your committee?

Senator **Heinz**. We could not today.

Senator **Ford**. Could not today?

Senator **Heinz**. Not as of today. But I anticipate——

Senator **Ford**. That is good news.

Senator **Heinz**. I anticipate that by election day we will be able to do pretty close to that.

Senator **Ford**. So I am up for reelection, and my opponent is assured through your committee that he will get the maximum allowed under the law, which will be $345,000. And you can give the maximum to every incumbent.

Senator **Heinz**. Senator, that is where we hope to be.

Senator **Ford**. All right. And I think you will be, and I understand that very well.

But is that not sufficient spending power to the national committees.

Senator **Heinz**. Senator, it is not even just a national limit. It is a limit on each of our parties. The State party cannot give a penny more than that overall limit of 4 cents times the number of eligible voters times some adjustment for inflation. It does not make any difference where it comes from. It just cannot be given by a county committee, a State committee, a national committee, a campaign committee, or the House or Senate beyond those limits.

Now, it seems to me that all we are doing, and maybe this was the idea of the framers back in 1974 is to emasculate the political committees and drive candidates to all these other sources of money that are either time consuming or, if you believe Senator Boren, sources of unmitigated problems.

Senator FORD. My 5 minutes is up. I would like to chat a little bit more about the authority.

Senator HEINZ. Surely.

Senator FORD. And I would like to submit some questions, as we did Senator Boren, to Senator Heinz.

Senator HEINZ. Be happy to answer those.

The CHAIRMAN. Senator Simon.

Senator SIMON. Yes.

Senator Heinz, taking the limits off, as you suggest, what, if I may just to be very practical, what was the budget of the Republican Senatorial Campaign Committee last year? What was the total amount you raised?

Senator HEINZ. Well, I was not the chairman—I do not have the numbers of 1985 yet.

Let me give those to you in writing. I do not——

Senator SIMON. Why do we not get some rough approximations here?

Senator HEINZ. Because I do not want to be inaccurate.

Senator SIMON. I understand. But what are we talking about?

Senator HEINZ. Basically, to the best of my recollection, for the 2-year cycle, 1983-84, my predecessor committee raised a net of about $10 million.

Senator SIMON. My recollection is that the figure was substantially larger than that

Senator HEINZ. If you are talking about gross receipts, it might well have been.

Senator SIMON. I am talking about gross.

Senator HEINZ. Oh, I do not have those numbers.

Now, what I count, Mr. Chairman, and my friend from Illinois, what is in the bank.

Senator SIMON. All right.

I see your counterpart for the Democratic committee, Senator Mitchell, is here.

My recollection is that you raised approximately 10 times as much as the Democratic committee, is that correct?

Senator HEINZ. I do not know. You would have to ask Senator Mitchell.

Senator SIMON. My point, however, is if one committee can raise 10 times as much and give 10 times as much to candidates, and we take this limit off, then we are creating a great imbalance out there.

Senator HEINZ. Maybe it works the other way. Maybe people do not give to the Democratic Party because they do not think the Democratic Party supports its candidates, maybe they do not like the platform of the Democratic Party, maybe technically the Democratic Party does not do a good job raising money, maybe it is some other reason.

I cannot explain what either the DNC or Senator Mitchell's committee is able or not able to do. It seems to me that the principle as to whether or not one allows the political committees, the political parties to play a role is the important principle. And if it so happens that for one reason or another the Republican Party or the Democratic Party does not have a message the people find inspiring, credible, forward looking, that is life.

Senator SIMON. But it may also be that one party is helping unemployed people who cannot contribute. Maybe one party is helping people who are really the down and outers who ought to be helped by society, and another party is helping people who happen to be in a situation where they can give generously. And if we simply take the limits off, all of a sudden, both of our parties are going to be appealing to the wealthy rather than to the——

Senator HEINZ. Senator, I have got to correct you on something, because you made an implication that the Republican Party is financed by fat cats. And if you will get George Mitchell to give you his numbers, the one thing I can tell you he will tell you is that his average contribution is a heck of a lot bigger than our average contribution.

Our average contribution is roughly $30 per person. His is two or three times that. So if you want to find out which party is financed by fat cats, it is yours, not ours.

Senator SIMON. Well, we will get Senator Mitchell up here very shortly to ask him about this.

But it does seem to me that we should not create a situation where either party should be appealing primarily to these huge contributors and have unlimited financing.

Let me shift to another area. How do you feel about the way we finance Presidential campaigns?

Senator HEINZ. I think it works.

Senator SIMON. What is wrong with using that same system for the senatorial campaigns?

Senator HEINZ. Well, I guess I would have two difficulties. The first is that, speaking for myself, I am not quite ready to subscribe to the notion that people should be taxed by the Internal Revenue Service and have their money contributed to candidates, for example, candidates in other States who are in no way representing them.

Under the Presidential system, we at least have a national system for a national constituency. But I do not know that my constituents in Pennsylvania would like to be taxed to send money on your election or re-election in Illinois.

Senator SIMON. But if they do it, and I am getting a subtle hint from the chairman over here, if they do it voluntarily, it seems to me that is in everyone's best interest, in Pennsylvania, Illinois, and elsewhere.

Senator HEINZ. Voluntarily, yes. What do you have in mind?

Senator SIMON. Well, that is what we do on the Presidential system, it is a voluntary checkoff.

Senator HEINZ. There are many definitions of voluntary.

Senator SIMON. OK.

Thank you, Mr. Chairman.

The CHAIRMAN. Your time is up.

Senator HEINZ. I gathered that.

The CHAIRMAN. Senator Ford has suggested he is going to submit some further questions in writing. Perhaps you will do so and others will, and Senator Heinz has agreed to respond.

Senator HEINZ. Mr. Chairman, thank you very much.

### SECTION-BY-SECTION EXPLANATION

Sec. 1. The title is the Comprehensive Campaign Law Reform Act of 1985.

Sec. 2. This section provides that any reference in this Act to a section or other provision is a reference to a section or provision of the Federal Election Campaign Act of 1971, as amended in 1974, 1976 and 1979.

Sec. 3. Paragraph (a) defines contribution to include donations made to draft committees advocating that a clearly identified individual become a candidate for federal office.

Paragraph (b) exempts from the definition of contribution donations to political committees of political parties which are used solely to defray establishment, administration, and solicitation costs. The donations would not be subject to any limitation, but would be reported on a semiannual basis.

Paragraph (c), (1) extends to the national committee of a political party the current exemption from the definition of contributions regarding costs for campaign materials such as pins, bumper stickers, handbills, brochures, posters, party tabloids, and yard signs.

Paragraph (c)(2) extends to the national committee of a political party the exemption from the definition of contribution the costs of voter registration and get-out-the-vote drives. This provision also expands the class of candidates on whose behalf this activity can be undertaken to include all federal candidates.

Paragraph (d)(e), (f)(1) and (f)(2) are technical amendments to incorporate the above changes in the definition of expenditure.

Sec. 4. This section requires political committees of a political party receiving donations which are used solely to defray establishment, administration, and solicitations costs under Section 3, Paragraph (b) to report those donations on a semiannual basis.

Sec. 5. This provision creates a private civil cause of action in favor of any person who has been harmed by another person who violates section 438(a)(4). That section prohibits the use of information from FEC reports for solicitation or commercial purposes.

Sec. 6. This provision allows a political committee of a political party to seek the expedited procedure for advisory opinion requests during the 60 day period before an election.

Sec. 7. Paragraph (a)(13) requires the Commission to establish time limits on investigations undertaken by the general counsel.

Paragraph (a)(14) requires the Commission to publish an index of all investigations and to update the index on quarterly basis.

Paragraph (b) requires the Commission, in any internally generated matter, to notify the potential respondent of the alleged violation and permit such person to demonstrate why no action should be taken. The Commission may request further voluntary responses before taking any action. Any finding by the Commission must be accompanied by a written statement of reasons.

Paragraph (c) requires that the Commission make available to a respondent any evidence relied upon by the general counsel in recommending whether the Commission should find probable cause to believe that a violation has occurred. This paragraph also requires that a copy of any belief or report by the general counsel in reply to the respondent's belief shall be provided to the respondent.

Paragraph (d) requires that an opportunity for a hearing be provided to a respondent before the Commission makes any determination regarding probable cause. This paragraph further provides that the Commission may not demand an admission of guilt by the respondent in any conciliation agreement.

Paragraph (e) deletes the authority of the Commission to levy civil penalties for violation other than a knowing and willful violation of the Act.

Sec. 8. This section deletes the requirement of 2 U.S.C. 437(h) that the Court of Appeals sit en banc when hearing cases brought under this provision.

Sec. 9. Paragraph (a) requires that each person requesting copies of reports and statements from the Commission, Clerk or Secretary to sign an affidavit certifying that they will not use the information in violation of the prohibitions. It further requires that copies of the affidavit shall be forwarded within 48 hours to the treasurer of each committee which is the subjects of the request.

Paragraph (b) requires the Commission to conduct audits in accordance with published procedures. Additionally, prior to any vote on any audit finding, the political committee involved is given an opportunity to respond in writing to any information furnished to the Commission.

Sec. 10. Paragraph (a) compensates for the effect of post-1974 inflation by increasing the individual contribution limit from $1,000 per election to $3,000 per election.

Paragraph (b) would increase the party committee contribution from $5,000 per election to $15,000 per election.

Paragraph (c) deletes the state expenditure limitations for a publicly funded candidate for the presidential nomination.

Paragraph (d) increases the base presidential primary expenditure limitation from $10,000,000 to $18,000,000. Additionally, this provision deletes the computations method for the state expenditure limitations. The presidential general election base expenditures limitations is raised from $20,000,000 to $30,000,000.

Paragraph (e) increases the amount of money a national party committee can spend on behalf of their presidential nominee. Additionally, this paragraph eliminates the limitation on the amount a party committee can spend on behalf of their Senate and House candidates.

Paragraph (f) increases the contribution limitation to candidates for the United States Senate from the Republican or Democratic Senatorial Campaign Committee or the national committee of a political party or any combination of such committees from $17,500 to $30,000.

Sec. 11. Paragraph (a) permits membership organizations, cooperatives or corporations without capital stock or their separate segregated funds to solicit the families of their members.

Paragraph (b) eliminates the annual corporate authorization requirements for trade association PAC corporation approval to stand until revoked.

Sec. 12. This section permits political committees of political parties to engage in bona fide commercial transactions in order to defray establishment, administration and solicitations costs.

Sec. 13. Paragraph (a) provides the opportunity for a presidential general election candidate to request a hearing before the Commission if a demand for a repayment of funds is made.

Paragraph (b) changes the availability of party convention funding from July 1 to January 1 of the calendar year preceding the convention.

Paragraph (c) provides the opportunity for a presidential primary candidate receiving public monies to request a hearing before the Commission if a demand for repayment is made.

Sec. 14. The effective date for these amendments shall be December 31, 1986.

The CHAIRMAN. Thank you very much.

Senator Mitchell, your arrival has been heralded.

## TESTIMONY OF HON. GEORGE J. MITCHELL, A U.S. SENATOR FROM THE STATE OF MAINE

Senator MITCHELL. Mr. Chairman, thank you very much.

Mr. Chairman and members of the committee, I again thank you for the opportunity to testify on the subject of campaign finance laws.

I last appeared before this committee on November 5 of last year to support legislation to provide for public financing of Senate general election campaigns. Mr. Chairman, let me say that I associate myself with your remarks. I strongly support such legislation.

As I said in November, since the 1974 amendments to the Federal Election Campaign Act, we have witnessed an explosion of campaign spending that has made the American political system more and more dependent on money. Each election cycle has increased that dependency. As one result, more and more of the time of Members of Congress must be devoted to fundraising activities.

Another more insidious result has been the effect on the electorate and its faith in our system of Government. This is where the greatest damage has been inflicted.

I do not impugn the integrity of Congress or of any individual Member. I have no personal knowledge of individual corruption. We must act before a scandal occurs, not after. And clearly the impression has been created in the minds of the electorate that these huge amounts of money are subverting the democratic process. The result is a continuing decline in public respect for Congress and for the laws we enact.

I will not today repeat my earlier testimony, but I do want to stress that, in my judgment, an overall spending limit is the only effective mechanism for dealing with the central problem of excessive spending in congressional campaigns. Nothing less will restore the American people's faith in our election system.

The original intent of Congress in adopting the 1974 amendments has largely been thwarted. The primary cause was the Supreme Court decision of *Buckley* v. *Valeo,* an unwise, poorly reasoned decision, which effectively repealed the spending limits in the law.

In recent years following that decision, campaign finance laws have suffered a continuing gradual destruction by those who have devised a newer and more ingenious method of circumventing those laws. I cite but one example:

It is a practice that has come to be known as bundling. A political action committee serves as a conduit for contributions from its individual members that are earmarked for a candidate. This practice enables such committees to circumvent the contribution limits of the current law. Unless prohibited, it will soon become common practice rendering meaningless contribution limits that are supposed to be the very heart of the law.

I strongly support, and I cannot understand why anyone would oppose the provisions in the Boren bill, which would clarify current law so that bundled contributions would be treated as contributions from political action committees for purposes of applying contribution limits.

To cite another example. In recent years, campaign finance laws have increasingly been circumvented by the use of so-called independent groups that spend money on behalf of a candidate. Often these committees are independent in name only. They work closely with the candidate they favor, thus permitting avoidance of limits.

The Boren bill would enforce the original intent of the law by clarifying what types of cooperation and consultation are permitted for an expenditure to occur independent—truly independent—of the candidate.

Some oppose this clarification because they allege it would interfere with their activities on behalf of the candidate. But the policy behind this proposal is clear. The campaign contribution limits in the law are thwarted to the extent that unlimited expenditures are made on behalf of, and in close cooperation with, the candidate.

The more basic thrust of the Boren bill is to reduce the role that political action committees play in campaign financing by reducing PAC contribution limits and imposing an overall limit on the amount of PAC contributions a candidate can receive. Whatever merit that provision has, it only reaches a part of the problem. Candidates will still look to individuals to supply ever-increasing amounts of campaign funds.

I oppose that provision in the Boren bill which would only make the situation worse by increasing the limit on individual contributions from $1,000 to $1,500. This proposal has nothing to do with the basic concern expressed by Senator Boren, which is to limit

PAC contributions. Instead, it will serve to further undermine the original intent of the 1974 legislation which was to increase the role of the small contributor.

I now turn to Senator Heinz' proposal. That, in my judgment, contains a number of features that would make a bad system much worse. It does nothing whatsoever to address the problem in the current system and, in fact, would result in large increases in campaign spending. Inexplicably it would do so while reducing public accountability.

Senator Heinz proposes to remove existing limits on contributions to candidates by political parties, thus permitting unlimited expenditures by national parties on behalf of candidates. This in no way addresses the central problem of excessive spending. Indeed, it will have the opposite effect because it simply creates another source of funds for candidates. It will dramatically increase the already excessive amount of money spent in political campaigns because the higher levels of party committee contributions would be in addition to current spending levels, not as a substitute for them.

There is not a shred of evidence to support the allegation that candidates would stop raising money on their own if they could get more money from the party committees. Past experience and human nature are directly to the contrary.

Furthermore, the political reasons for this proposal are obvious to anyone even remotely familiar with the financial imbalance in the American political system.

For those not so familiar, let me cite just a few figures. According to official reports of the Federal Election Commission for the 1983-84 election cycle, the Republican Senatorial Campaign Committee raised almost $83 million. I have the exact figure here to the dollar and I will supply it to the committee at the conclusion of my testimony.

In the same period, the Democratic Senatorial Campaign Committee raised just under $9 million.

In case anyone thinks they did not hear the figures correctly, let me repeat them. The Republican Senatorial Campaign Committee $83 million, the Democratic committee $9 million.

Is there any member of this committee, is there any person in this room, is there anyone in this country who believes that Senator Heinz, the chairman of the Republican Senatorial Campaign Committee, would be making this proposal today if those figures were reversed, if the Democratic Senate Campaign Committee had a 9-to-1 advantage in campaign funds. To ask the question is to answer it. The answer is clearly no.

The other party committees which would be affected by the Heinz proposal have a similar imbalance of resources. For example, for the House campaign committees in the 1983-84 election cycle, the comparable figures are the Republican committee $61 million, the Democratic committee $10 million.

When the Senate and House campaign committee totals are combined, the figures for the 1984 election are Republicans $144 million, Democrats $19 million.

This proposal seeks to transform an already enormous advantage into an overwhelming advantage. For that reason alone, it should be rejected.

But there are other reasons. For example, the bill would permit national political parties to accept unlimited contributions from foreign nationals and foreign organizations to finance the general operation. Do we really want foreign nationals, persons, and organizations who are not American citizens to finance the operations of American political parties? Is not the potential for abuse so obvious and so great as to make us reject this unwise proposal?

Other provisions in the Heinz bill appear designed to frustrate the regulatory role of the Federal Election Commission. The bill would alter public access to contribution records by requiring anyone who wants to examine FEC records to sign an affidavit. The FEC would be then required to transfer that affidavit to the treasurer of the committee whose records are requested within 48 hours. Such an intrusive procedure appears to be designed only to intimidate the public and frustrate investigations by the press. This would clearly be contrary to the basic thrust of our campaign finance laws, increase disclosure in public accountability.

Finally, Senator Heinz' bill would hinder the Federal Election Commission's authority to enforce disclosure laws by adding new layers of procedure which the Commission would have to work through before it could act. The Commission is already laboring under an expanding workload with limited funds.

For these and other reasons, I urge the committee to reject the Heinz bill.

Mr. Chairman, I have a statement of total receipts of the Democratic and Republican Party committees for the 1983-84 election cycle taken from official reports of the Federal Election Commission. I ask that it be made a part of the record.

The CHAIRMAN. Without objection, it will be part of the record.

[The information referred to follows:]

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DECEMBER 5, 1985

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## FEC FINAL 1984 REPORT SHOWS REPUBLICANS STILL HOLD FINANCIAL LEAD

WASHINGTON — Final Federal Election Commission figures for the 1983-84 election cycle show that while the Republican Party maintained a three-to-one lead over the Democratic Party in overall financial activity, the Democrats increased their activity by a substantial margin over 1981-82 and 1979-80, when they trailed the Republicans by more than five-to-one.

From January 1, 1983, through December 31, 1984, the Republican Party raised $297.9 million and spent $300.8 million, an increase of approximately 40% over 1982 levels. The Party began the cycle with $7.5 million cash-on-hand.

The Democrats, beginning with only $1.4 million cash-on-hand, raised $98.5 million and spent $97.4 million. This was an increase of 151% in receipts over 1982, and an increase of 143% in spending for the same period.

In direct support of federal candidates for the '84 elections, the Republican Party spent only twice as much as the Democrats. Contributions to Presidential, Senate and House campaigns, as well as general election expenditures on their behalf totalled $25 million for the Republicans and $11.6 million for the Democrats. In the 1982 elections, Republican direct support totalled $20 million, compared to Democratic support of $5 million - a four-to-one difference.

Contributions made directly to Senate and House campaigns by the Democratic Party increased only slightly in 1984 over 1982 ($1.8 million compared to $1.7 million.) However, general election expenditures made by the Party on behalf of its candidates continued the dramatic rise begun in the '82 elections. The Democrats spent $4.4 million on behalf of Senate campaigns in the fall of 1984, an increase of 83% over 1982 levels. The $1.8 million spent for House candidates in 1984 was a 129% increase over 1982.

GOP contributions to federal candidates in the 1984 elections dropped by 15%, totalling $4.9 million compared to $5.6 million contributed in 1982. While spending twice as much as the Democrats on its general election candidates, the Republican Party actually spent 29% less on Senate campaigns in 1984 than in 1982 ($6.8 million compared to $8.7 million), and only increased by 14% its spending on House races ($6.3 million compared to $5.5 million.)

FEC data shows that both parties managed to end the cycle with fewer debts than in the 1982 elections: as of December 31, 1984, Republicans had debts of $2 million, with cash-on-hand of $4.9 million; Democrats had debts totalling $3 million, with $2.4 million cash-on-hand. In late December 1982, those figures were: Republicans - $5.3 million debt, $7.5 million cash-on-hand; Democrats - $4.1 million debt, $1.4 million cash-on-hand.

The national committees of the Democratic Party reported receiving $12 million in loans during the '84 election cycle and made loan repayments totalling $13 million during the same two-year period, which accounted for approximately 17-18% of their total financial activity. The Republican national committees reported no loan activity.

The Republican Party received a greater percentage of money from individuals, 88%, than the Democratic Party, which received 59% of its funds from individuals. PAC money accounted for 7% of the Democratic Party's receipts and one-half of one percent of Republican Party revenues.

Below are tables listing political party activity for the past four election cycles. The charts on the following pages provide greater detail on the sources of receipts for both parties and the amounts contributed to candidates or spent on their behalf.

| | REPUBLICANS | | | | DEMOCRATS | | | |
|---|---|---|---|---|---|---|---|---|
| | 83-84 | 81-82 | 79-80 | 77-78 | 83-84 | 81-82 | 79-70 | 77-78 |
| Raised | $297.9 | $215.0 | $169.5 | $84.5 | $98.5 | $39.3 | $37.2 | $26.4 |
| Spent | $300.8 | $214.0 | $161.8 | $85.9 | $97.4 | $40.1 | $35.0 | $26.9 |
| Contributed | $ 4.9 | $ 5.6 | $ 4.5 | $ 4.5 | $ 2.6 | $ 1.7 | $ 1.7 | $ 1.8 |
| Coord. Exp. | $ 20.1 | $ 14.3 | $ 12.4 | $ 4.3 | $ 9.0 | $ 3.3 | $ 4.9 | $ .4 |

(figures in millions of dollars)

The full FEC Reports on Financial Activity, 1983-84 Final Report: Party and Non-Party Political Committees is a four-volume set. Volumes may be purchased from the Commission's Office of Public Records, 1325 K St., N.W., Washington, D.C. 20463. Telephone: (202) 523-4181, or toll free (800) 424-9530. The cost is $15 per volume. Questions concerning the material contained in the Report should be directed to the Commission's Press Office at (202) 523-4065, or toll free (800) 424-9530.

## MAJOR POLITICAL PARTY FINANCIAL ACTIVITY 1983-84

| Committee 1/ | #Cmte | Total Receipts (as reported) | Net Receipts (minus Transfers) | Total Disbursements (as reported) | Net Disbursements (minus Transfers) | Latest 2/ Cash-on-Hand | Debts Owed to | Debts Owed by | Contributions From PAC's | Total Individual Contributions |
|---|---|---|---|---|---|---|---|---|---|---|
| DNC Services Corp. | 1 | $ 46,626,873 | $ 46,626,873 | $ 46,617,481 | $ 46,611,516 | $ 292,543 | $ 0 | $ 2,011,244 | $ 1,437,963 | $32,194,486 |
| Dem. Sen. Camp. Cmte. | 1 | $ 8,904,115 | $ 8,904,115 | $ 8,713,726 | $ 8,713,726 | $ 214,246 | $ 0 | $ 0 | $1,779,116 | $ 5,240,840 |
| Dem. Cong. Camp. Cmte | 1 | $ 10,391,548 | $ 10,391,548 | $ 10,207,965 | $ 10,207,965 | $ 298,548 | $ 0 | $ 298,563 | $ 1,471,719 | $ 6,907,921 |
| Assoc. State Chair. | 1 | $ 5,779,149 | $ 5,779,149 | $ 5,592,802 | $ 5,592,802 | $ 766,847 | $ 0 | $ 0 | $ 0 | $ 5,755,986 |
| Subtotal | 4 | $ 71,701,685 | $ 71,701,685 | $ 71,131,974 | $ 71,126,009 | $ 1,572,184 | $ 0 | $ 2,309,807 | $ 4,688,798 | $50,099,233 |
| Pres. Convention | 1 | $ 8,257,439 | $ 8,257,439 | $ 8,146,319 | $ 8,146,319 | $ 111,120 | $ 0 | $ 0 | $ 0 | $ 639,068 |
| State & Local | 88 | $ 18,604,205 | $ 18,522,274 | $ 18,254,528 | $ 18,166,202 | $ 767,951 | $ 29,928 | $ 645,827 | $ 1,775,458 | $ 7,552,803 |
| Grand Total | 93 | $ 98,563,329 | $ 98,481,398 | $ 97,532,821 | $ 97,438,530 | $ 2,451,255 | $ 29,928 | $ 2,955,634 | $ 6,464,256 | $58,291,104 |

| Committee 1/ | #Cmte | Total Receipts (as reported) | Net Receipts (minus Transfers) | Total Disbursements (as reported) | Net Disbursements (minus Transfers) | Latest 2/ Cash-on-Hand | Debts Owed to | Debts Owed by | PAC Contributions | Total Individual Contributions |
|---|---|---|---|---|---|---|---|---|---|---|
| Rep. Nat'l Cmte | 2 | $205,738,362 | $105,931,314 | $204,380,419 | $104,573,373 | $ 1,666,721 | $ 81,113 | $ 0 | $ 668,431 | $ 99,877,524 |
| Nat'l Rep. Sen. Cmte | 2 | $165,203,755 | $ 81,655,723 | $166,982,611 | $ 83,642,301 | $ -437,850 | $ 83,225 | $ 414,623 | $ 378,710 | $ 77,007,210 |
| Nat'l Rep. Cong. Cmte | 2 | $117,984,582 | $ 58,304,582 | $121,259,942 | $ 61,729,942 | $ 1,759,369 | $ 0 | $ 10,212 | $ 243,055 | $ 52,266,064 |
| Other Nat'l Cmtes | 1 | $ 220,627 | $ 220,627 | $ 218,130 | $ 218,130 | $ 2,501 | $ 500 | $ 62,632 | $ 200 | $ 161,862 |
| Subtotal 3/ | 7 | $489,147,326 | $246,112,246 | $492,841,102 | $250,163,746 | $ 2,990,741 | $ 164,838 | $ 487,467 | $ 1,290,396 | $229,312,650 |
| Pres. Convention | 2 | $ 8,672,623 | $ 8,672,623 | $ 8,692,070 | $ 8,692,070 | $ 10,672 | $ 0 | $ 0 | $ 0 | $ 0 |
| State & Local | 131 | $ 44,327,938 | $ 43,129,200 | $ 43,332,310 | $ 41,931,619 | $ 1,937,716 | $ 61,781 | $ 1,536,124 | $ 434,513 | $ 32,694,666 |
| Grand Total | 140 | $542,147,887 | $297,914,069 | $544,865,482 | $300,787,435 | $ 4,939,129 | $ 226,619 | $ 2,023,591 | $ 1,724,909 | $262,007,316 |

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1/ Categories of committees listed here differ from those in FEC Reports on Financial Activity, 1983-84, Final Report: Party and Non-Party Political Committees.

2/ Latest cash-on-hand is as of December 31, 1984, unless committee ceased reporting earlier in the election cycle or has not yet filed all reports.

3/ Total receipt and disbursement figures (as well as net receipt and disbursement figures) for national level committees include payments received from the sale of goods and services to candidates' campaigns. These payments were reported as offsets to expenditures and as operating expenses. Therefore, they are not included as contributions to candidates or as coordinated expenditures.

## MAJOR POLITICAL PARTY FINANCIAL ACTIVITY 1983-84
(January 1,1983 - December 31, 1984)

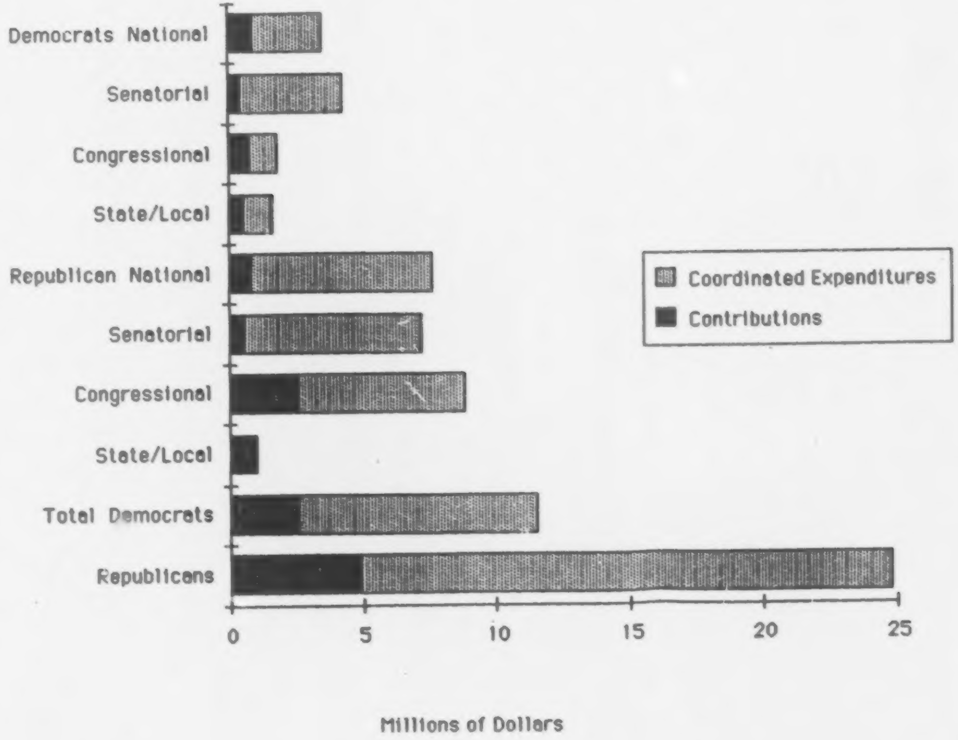
| DEMOCRATIC PARTY | CONTRIBUTIONS TO CANDIDATES | | | | EXPENDITURES ON BEHALF OF CANDIDATES | | | |
|---|---|---|---|---|---|---|---|---|
| COMMITTEE 1/ | TOTAL | PRESIDENTIAL | SENATE | HOUSE | TOTAL | PRESIDENTIAL | SENATE | HOUSE |
| DNC SERVICES CORP. | $ 925,672 | $ 820,922* | $ 0 | $ 104,750 | $2,665,184 | $2,659,678 | $ 506 | $ 5,000 |
| DEM. SEN. CAMP. CMTE. | $ 420,185 | $ 0 | $ 420,035 | $ 150 | $3,948,650 | $ 0 | $3,948,650 | $ 0 |
| DEM. CONG. CAMP. CMTE. | $ 762,767 | $ 0 | $ 1,695 | $ 761,072 | $1,124,047 | $ 0 | $ 0 | $1,124,047 |
| ASSOC. STATE CHAIR. | $ 0 | $ 0 | $ 0 | $ 0 | $ 0 | $ 0 | $ 0 | $ 0 |
| SUBTOTAL | $2,108,624* | $ 820,922* | $ 421,730 | $ 865,972 | $7,737,881 | $2,659,678 | $3,949,156 | $1,129,047 |
| PRES. CONVENTION | $ 0 | $ 0 | $ 0 | $ 0 | $ 0 | $ 0 | $ 0 | $ 0 |
| STATE & LOCAL | $ 519,120 | $ 8,887 | $ 54,469 | $ 455,764 | $1,274,170 | $ 127,629 | $ 455,721 | $ 690,820 |
| GRAND TOTAL | $2,627,744* | $ 829,809* | $ 476,199 | $1,321,736 | $9,012,051 | $2,787,307 | $4,404,877 | $1,819,867 |

| REPUBLICAN PARTY | CONTRIBUTIONS TO CANDIDATES | | | | EXPENDITURES ON BEHALF OF CANDIDATES | | | |
|---|---|---|---|---|---|---|---|---|
| COMMITTEE 1/ | TOTAL | PRESIDENTIAL | SENATE | HOUSE | TOTAL | PRESIDENTIAL | SENATE | HOUSE |
| RNC | $ 848,794 | $ 0 | $ 0 | $ 848,794 | $ 6,817,810 | $6,811,061 | $ 0 | $ 6,749 |
| NAT'L REP. SEN. CMTE | $ 563,051 | $ 422 | $ 562,629 | $ 0 | $ 6,732,151 | $ 0 | $6,732,151 | $ 0 |
| NAT'L REP. CONG. CMTE | $2,581,579 | $ 0 | $ 753 | $2,580,826 | $ 6,264,062 | $ 0 | $ 0 | $6,264,062 |
| OTHER NAT'L CMTES. | $ 0 | $ 0 | $ 0 | $ 0 | $ 0 | $ 0 | $ 0 | $ 0 |
| SUBTOTAL | $3,993,424 | $ 422 | $ 563,382 | $3,429,620 | $19,814,023 | $6,811,061 | $6,732,151 | $6,270,811 |
| PRES. CONVENTION | $ 0 | $ 0 | $ 0 | $ 0 | $ 0 | $ 0 | $ 0 | $ 0 |
| STATE & LOCAL | $ 887,109 | $ 5,263 | $ 103,984 | $ 777,862 | $ 269,291 | $ 200,377 | $ 30,771 | $ 38,143 |
| GRAND TOTAL | $4,880,553 | $ 5,685 | $ 667,366 | $4,207,482 | $20,083,314 | $7,011,438 | $6,762,922 | $6,308,954 |

1/ Categories of committees listed here differ from those in FEC Reports on Financial Activity, 1983-84, Final Report: Party and Non-Party Political Committees.

* $820,922 represents proceeds from joint fundraising activity for various presidential campaigns.

Party Committee Support of Federal Candidates



Senator **Mitchell**. Before I complete my testimony, Mr. Chairman, I would like to comment briefly on one other campaign finance proposal which is not now before this committee but which will likely be considered soon by the full Senate.

I am referring to a provision in the House-passed tax bill that would permit a tax credit to fully offset up to $100 of each taxpayer's campaign contributions to in-State congressional candidates. I expect this proposal to be before the Senate during the debate on tax reform and, if enacted, it will likely displace congressional consideration of other campaign finance reforms.

This committee should be aware of that legislation and the effect it will have on the campaign finance system. The intent of the 100-percent tax credit—to increase the importance of individual contributions relative to PAC's—may be laudable. But it is by no means clear that such a result would be achieved. It is more likely that such a provision will only serve to further increase the flood of money to campaigns for public office. And it would do so at a tremendous cost to taxpayers.

At a time when we are grappling with the problems of the enormous Federal budget deficit, this proposal would, according to estimates by the Joint Tax Committee, reduce Federal revenues by $100 million a year. Even that estimate fails to take into account the changes in campaign fundraising that will amost certainly occur as congressional incumbents set up permanent organizations to collect $100 annually in fully subsidized campaign contributions.

The ultimate cost of this tax credit would be several times more than the cost of any conceivable public financing system. But the basic problem of excessive campaign spending would not be addressed.

I will not now discuss the tax policy reasons why this credit should be opposed. This is not the proper committee for such a discussion. But I do believe you should be aware of the proposal and of the possibility that it will be enacted into law as part of a tax reform bill, therefore potentially as a substitute for more comprehensive and substantive finance reforms which are now before this committee.

Mr. Chairman, I thank you and the members of the committee for your attention, and I will be pleased to try to answer any questions you may have.

The **Chairman**. Senator Mitchell, in your usual clear vision, you have anticipated the question that I wanted to ask you, which was about this provision in the House tax bill. Whether you think that this credit proposal does increase the effect of the individual contributor.

Senator **Mitchell**. It will undoubtedly stimulate increased individual contributions, and to that extent it will have that effect. But, Mr. Chairman, I believe that whatever benefit is derived from that, and I think that will be marginal, will be more than offset by the tremendous increase that this will provide in total campaign spending. For other reasons, I think it is an unwise proposal.

The **Chairman**. Thank you very much.

Senator Ford

Senator **Ford**. Mr. Chairman, I am going to yield my 5 minutes to Senator Simon.

Senator SIMON. I thank you, Senator Ford, and Mr. Chairman. In fact, Senator Mitchell has also answered the bulk of my questions.

Let me just again, and I know you testified on this in November, but the proposal of our chairman for the checkoff, does that, on reflection, make more sense than anything else you have seen come down the pike?

Senator MITCHELL. Except for a public financing bill that I have written and introduced. [Laughter.]

Yes, I strongly favor public financing because it is now the only legal mechanism for imposing overall campaign spending limits. I want to make clear that is what I think is the essential part of any solution to campaign spending limits.

My support for public financing derives from the fact that the Supreme Court has said, in the *Buckley* v. *Valeo* decision, that the only way you can have campaign spending limits is through the medium of public financing. I think your proposal is a good one, and I would hope that we could combine the two efforts. The defect I see in yours is that it covers only the general election campaign, and you could have unlimited spending up through the primary. In many States there are September primaries and, therefore, it could be subverted.

I would prefer to move it back in time, and I would also prefer to have a matching system which would encourage contributions by individuals or PAC's in an amount which would be matched up to $100.

I am for public financing. I like your bill. I think there are some possible problems with it that I would like to see resolved, but, on balance, I am a strong supporter of it.

Senator SIMON. Is it not a fact we are creating more and more problems? I saw the other day about a slush fund created for Spanish lessons are being provided, and that one happens to be the Republican Party, but it could be the Democratic Party. We just have to face up to this thing, do we not?

Senator MITCHELL. I could not agree with you more, Senator. I think it must be emphasized that no party, no group of individuals has a monopoly on morality; no party has a monopoly on righteousness. The possibility for scandal and corruption exists with respect to both parties, and office holders and candidates of both parties.

Our obligation here ought to be a public one, independent of political considerations and we should look to what is best for this country. Certainly with respect to the Presidential campaigns, no one would suggest we go back to the pre-public financing era. When candidates for President of the United States had to go through the demeaning fundraising process by which they perhaps indebted themselves upon assuming office to those who contributed to their campaigns. Well, if it makes sense for Presidential candidates, why does it not make sense for Senators? Certainly no one would suggest that we have more morals than Presidential candidates and, therefore, they do not have to worry about us. Certainly no one would suggest that our roles are so insignificant in the American political system that we need not worry about it, that we do not have enough influence to affect anything anyway.

So I cannot understand anyone who would say we ought to have public financing of Presidential campaigns but not Senate campaigns. I think it makes a great deal of sense.

Senator SIMON. I thank you, Senator Mitchell. Thank you, Mr. Chairman.

The CHAIRMAN. I agree so much with what Senator Mitchell has just said that I think that is a good point to leave his testimony.

Senator MITCHELL. I thank you, Mr. Chairman. I thank the members of the committee.

The CHAIRMAN. As the Bible says, the last shall be first.

Senator Stennis, who is the first, is the last of our Senate witnesses. We are happy to have him here. He has been very patient.

### TESTIMONY OF HON. JOHN C. STENNIS, A U.S. SENATOR FROM THE STATE OF MISSISSIPPI

Senator STENNIS. Mr. Chairman, as always, it is a privilege for me to appear before this committee. This is the first official act that I ever performed on Capitol Hill in a committee when I appeared before the Rules Committee.

Now, I will be quite brief, Mr. Chairman. I think you have had a fine presentation here. One of the most troublesome things that is in our processes now, elections.

I remember the debate we had when we passed what is the present law. I want to get down to the fundamentals though and, as I said, I emphasize that I will be brief on this.

I feel that under the present law that we have now, we are gradually moving the elections away from the people just as certain as night follows day. The tendency moves it away from the people. I want to get that turned around to the extent that it will keep the election within the reach and the touch and the visibility of the people.

I want to refer back to almost 200 years ago when our forebears were struggling, and it was a struggle, to rewrite a Constitution of the United States. They already had one and it was not proven to be effective.

Summing up what they did here with reference to keeping the Government close to the people. Look what they did when they looked to the problem there of declaring war. They withheld on that at first but finally agreed that the ones elected by the people directly and by the State legislatures would have the sole power to declare war. Now, that was getting it just as close to the people as they could then.

Those that the people generally tended to know in the village, in the town, in the city, anywhere, were those men elected by them already to this legislative body. They changed the law later and even elected Senators. I remember when that law was first passed. The trend was to make it more by the people, those elected by the people. So now that is the score on that.

When it came to the matter of taxation, something that is still of vital concern, a necessity, 200 years later to the people, they wound up by providing that all revenue measures should originate with the House of Representatives. They were the only ones then directly elected in the legislative branch, as we have just said.

Going on then as far as they could, who is going to be commander of the forces, the military forces? I am not certain just what the language was, but it amounted to an agreement finally that the President of the United States would be the commander of all military forces.

So I say the election ought to be kept where that power and responsibility and accountability is. These elections by whatever name called that we have now, this system is a problem. It is moving the election itself away from the people farther and farther and farther. That is the way they feel. I know how they feel. I was reared and have lived all my life among the people at the ground level. I know, I know what they think and what they say. They feel like things are being moved away from them. Those of us who have been around here awhile know that Government does not come easy. It is perhaps getting more difficult. We had better stick to the fundamentals and hold the interest and a feeling of responsibility of every citizen that we possibly can. And these elections of this kind, where they send in the money in whatever name you give it, whatever division it is, it is not the people at the grassroots level except to a small extent, very small extent.

So I favor only a system that will tend to perpetuate that responsibility and opportunity for the people to control these elections. We have to make choices. I commend those that started to work on this anew, and I am pleased that you skipped over the immediate impending election because that is the practical side of it, but something absolutely must be done in this field. I believe that we realize that now and have purpose enough to carry it out.

I have, Mr. Chairman, a brief statement here largely covering the remarks I have made, and I ask unanimous consent it be inserted in the record.

The CHAIRMAN. Without objection, it will be included in the record.

[The prepared statement of Senator Stennis follows:]

### PREPARED STATEMENT OF SENATOR JOHN C. STENNIS BEFORE THE SENATE COMMITTEE ON RULES AND ADMINISTRATION

Mr. Chairman, I commend you for holding these hearings on campaign finance reform, and I appreciate this opportunity to appear before your Committee and share with the Members my concerns about the problems and dangers, as I see them, in this area.

I am pleased to be a cosponsor of S. 1806, legislation sponsored by Senator Boren that would impose some much-needed limits on political action committee spending for federal election campaigns.

I am greatly concerned about the enormous sums of money that are now used in federal campaigns, and I am troubled by all of the outside money that now finances these campaigns.

To a large degree, the presence of this outside money from political action committees moves the election father and farther away from the people. These huge sums tend to overwhelm the efforts and interest of the local people themselves. And that is really not within the spirit of our Constitution which provides that United States Senators shall be elected by the people of the individual states.

Our whole constitutional system places the law-making power directly in the hands of the representatives of the people. Only the House of Representatives, for example, has the power to originate tax legislation. Only the Congress has the power to declare war. These provisions were carefully drafted by the framers of our Constitution to ensure that the people themselves continued to control the goverment of their new Republic.

When we permit, and in fact encourage, outside groups to send in outside money to help elect these constitutional officers, we are violating the spirit of our Constitution and should discontinue the practice.

Much of this money comes from people who have no direct interest in the state where the election is being held. Frequently much of this money comes from people whom the candidates do not know and with whom the candidate may have little in common.

I am in no way being critical of any particular Senator for accepting money from these groups. Indeed, under current law it is very difficult for any Senate candidate to refuse to accept money from these political action committees. Unless he is independently wealthy, he is certain to find himself swamped and outspent by an opponent who does not share his reluctance to accept these contributions.

The only way to deal with the problem, therefore, is to impose some limits on the amount of money any candidate can accept from these political action committees. Senator Boren's legislation moves us in this direction.

Quite frankly, I should go farther in preventing PAC funding than does this legislation, but we must begin somewhere, and this legislation is an excellent way to start. Once we get it in place, then we can come back and tighen the law up even more.

I am afraid if something is not done, all of this spending is simply going to undermine our entire system of elections. We cannot afford to delay any longer. We last made major changes in our campaign finance laws almost 12 years ago. I voted against the legislation then because I feared it would lead to just the situation we face now. We must get into this problem now before the situation gets worse.

So I commend you, Mr. Chairman, for giving this your diligent attention. I encourage the Committee to continue their hard work on this. I am certainly willing to help in any way I can. This matter is too important for us to allow it to be delayed.

Senator **Stennis**. Mr. Chairman, again I thank you for the privilege of coming here. I am interested. I will be coming back to learn more. May God guide you in your wisdom of presenting to the Congress, the full Congress, the plan that is flexible and effective and, by all means, keeps the election close to the people and in a way that makes them feel they are part of it, that it is an opportunity and it is a responsibility of theirs.

Thank you very much.

The **Chairman**. Well, we thank you, Senator Stennis, for your comments which are drawn from your years of experience. You have seen a lot of elections, you have seen a lot of successes, and you have seen some mistakes made. I know that your testimony here today and the statement that you have left with us reflect your observations to those years.

Senator Goldwater testified not too long ago on this subject in this committee. He has seen almost as many elections as you have, and he said that this tidal wave of money that is washing through the political system is, in his words, "a crisis of liberty," a crisis of liberty.

Do you think that is too strong a statement?

Senator **Stennis**. No, I do not think it is too strong. I think it is a reality. And I had not realized that the Federal law was so bad even though I did not vote for the current law. It was too much for me.

My own recent campaign caused me to realize the problem and I have been studying on it ever since. It has not gone away.

The **Chairman**. Senator Ford.

Senator **Ford**. As the Senator has eloquently said in his testimony, Government is to serve people, and we agree, I think, with the Senator from Mississippi. I think it is proper, right, and necessary that he shake some of us up a little bit and make us realize what we are getting into.

I compliment him and thank him for his testimony today. For all practical purposes, it may change my views a little bit.

I thank you very much.

The **Chairman**. Senator Simon.

Senator **Simon**. I simply want to join in commending Senator Stennis. He is an inspirational figure in every way, and we are grateful for your coming here and just laying it on the line as you do regularly. I am very grateful to you. We are a richer body for your presence and what you contribute here.

Senator **Stennis**. Thank you, Senator.

The **Chairman**. Thank you very much, Senator Stennis, for being with us.

Our final witness today, we are fortunate to have Representative Synar who has taken a very broad view of public problems as a Member of the Congress and has particularly distinguished himself. We look forward to his testimony.

## TESTIMONY OF HON. MIKE SYNAR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA

Mr. **Synar**. Thanks, Mac., Paul, John, I am glad to be here today.

With each passing election, I think the need for reforming the campaign finance laws is more dramatically demonstrated. I know you have gone over a lot of statistics. Let me just review two that I think are really imperative.

The average voter in this country, ladies and gentlemen, is losing faith in the election process. In 1974, individual contributions financed nearly three-fourths of the total cost of a campaign. By 1984, just 10 years, it is now less than half.

Individual members are becoming increasingly dependent on PAC's to finance their campaigns and, in return, are becoming less dependent on the folks back home who put them in the office.

In the last election, 41 percent of all the incumbents in the House running for reelection received over half of their campaign funds from PAC's. Campaign spending, very frankly, is getting out of hand and the availability of PAC money is largely to blame. PAC contributions have increased 221 percent since 1978 when I was first elected. During the last election campaign cycle, PAC's contributed a total of $113 million to candidates.

Now, certainly there are some positive aspects to political action committees. They have enabled individuals with a common interest to have a greater say in the election process. And for that reason, I have never advocated the eliminations of PAC's. But, I am concerned that the increased role of PAC's has occurred at the expense of the average citizen. who has the perception that it takes large contributions to influence the outcome of an election.

I have stated before that controlling the growing influence of PAC's is the single most important issue we will address this year. It is more important than tax reform; it is more important than the budget and the reauthorization of Superfund precisely because it affects every one of the issues that we deal with in Congress.

Under the new Gramm-Rudman law I predict that PAC's are going to fight for more influence in Congress than ever before. I think that competition is going to be fierce. As a result, PAC spending will probably increase. The cost of running a campaign will probably escalate, members will become more dependent on PAC's, and the average voter will have to compete harder and harder to have any influence. The time for meaningful campaign reform is now.

You have heard about the Boren-Synar bill which is, I think, a very reasonable and a balanced approach. It basically increases the amount that individuals can contribute. At the same time, limiting the amount PAC's can contribute, and why? Because there have been some questions on that today.

Very simply, it is an effort to create a level playing field between PAC's and individuals. I am not suggesting, nor is Senator Boren suggesting, that our bill is perfect, and that is why I hope that this committee will give it really close attention. But I do think it offers us the best chance for reform in this Congress.

In 1979, when you were in the House, Senator Simon, the House passed legislation similar to the Boren-Synar bill. Even though the bill only affected House Members, it was defeated in the Senate. As a result, there has been little incentive in the House to move ahead on campaign finance reform legislation.

I think Senator Boren's successful floor vote and your leadership on the issue, Mr. Chairman, have shown that the Senate is ready to act on this very important issue. Hopefully, together, we can find the best approach to address our mutual concerns.

Let me close with two things. Since the successful attempt by my good friend Senator Boren on the floor, the House has taken a second look at this whole issue of campaign finance reform. And people like Congressman Al Swift, who chaired the Subcommittee on the Task Force for Campaign Reform, as well as the House leadership, are very interested in dealing with this issue. We are waiting with great interest to see what the Senate will do on this issue because I think once you all have acted, then we will begin to work. I think we can do something this year.

Second, I think everything we have heard here today can be summarized by something I said very early in this debate, almost 5 years ago. We have a responsibility to the people back home to give them more influence with the Government in Washington.

Robert Frost said it best in a poem he once wrote about a wall. He said "Before I build a wall, let me ask who I wall in and who I wall out and to whom I give offense."

I think our current campaign laws are building a wall between our elected officials and the people back home. In fact, we are very quickly evolving into having the best Congress and Government that money can buy. We have a responsibility to turn that tide.

I hope the Senate and this committee will take that responsibility and move legislation this year.

Thank you.

The CHAIRMAN. Thank you very much.

I think that states very succinctly exactly what we have met this morning to discuss.

We really have to contemplate how much is too much in this whole process, what constitutes a barrier as you suggest between the electorate and the elected.

In the 1984 election cycle, just for example, of the more than 4,000 registered nonparty PAC's, only 3,000 actually made any contributions to congressional candidates. Only 369 of those 3,000 PAC's made a $5,000 contribution to at least one Senate candidate; 117 PAC's contributed as much as $10,000—$5,000 in a primary and $5,000 in the general election—to a Senate candidate. You can break these figures down another way: The 117 PAC's making maximum contribution included 27 corporate PAC's, 30 labor PAC's, 37 nonconnected, and 19 PAC's categorized under trade, health, or membership organizations, 3 cooperative and 1 nonstock corporate PAC.

Now, in all, PAC contributions accounted for nearly $30 million in Senate campaign funds. Of that $30 million, about $4.6 million was contributed in $10,000 amounts by 117 PAC's. So these are a lot of figures to throw at you, but let me summarize them.

We have had an enormous growth in PAC's, from 400 to 4,000. Three-fourths actually make contributions to Senate candidates in gross amounts of $30 million. Only 117 made maximum contributions in both the primary and the general election to Senate candidates accounting for nearly $5 million out of the $30 million total.

So how do you know when enough is too much? How do you know out of all this mish-mash of statistics how to get hold of it without taking some radical measures to control the whole system, really to reform the whole system?

Mr. SYNAR. Well, Senator Mathias, I would suggest this, that the legislative gridlock that exists in the House and the Senate and the evolving of the Gramm-Rudman-Hollings bill could be attributed largely to the impact that special interests have had in holding all legislation in abeyance. This is a clear signal that the time for reform is right as is the exponential growth of PAC's in the last 10 years. I do not know if we will ever have clearer signals than these.

The CHAIRMAN. Well, I never had thought of this before, but since you are here and as one of the central figures in the Gramm-Rudman-Hollings drama, there is a certain element of commonality. I have said that Gramm-Rudman is reducing the budget by anonymous consent and, in effect, some of these PAC operations are the election of Congressmen by anonymous contributions.

Senator Simon.

Senator SIMON. First of all, may I commend you. I had the privilege, and it was a privilege, of serving in the House with Mike Synar, who was and is a stellar Member of that body.

If we were to move on public financing for the Senate, and that would get over to the House, what is the mood of the House? Do you think the House would pass a bill that would emerge from the Senate calling for a checkoff similar with Presidential races?

Mr. SYNAR. Paul, I think that a freestanding bill on public financing would have a difficult time in the House. If public financing was part of a whole package of campaign finance reforms, the chances are very good that we could pass something.

I have always said that I have personal problems with public financing, but we are quickly evolving to a point where that may be the only alternative to getting the system under control.

If public financing were part of an entire package of campaign finance reforms, the chances are excellent. We have shown twice in my tenure of only 8 years that we can pass campaign finance reform in the House in a bipartisan fashion. And the Boren-Synar bill is being cosponsored in the House by Republicans and Democrats alike, which I think shows the bipartisan flavor with which the House looks at this issue.

Senator SIMON. So if we could, say, combine the Boren-Synar bill with the bill that Senator Mathias and I have introduced on public financing so that you would move on the problem of PAC's and, at the same time, have public financing, do you think we would have a shot at passing it in the House?

Mr. SYNAR. Excellent. Yes, I do.

Senator SIMON. I thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Warner.

Senator WARNER. Mr. Chairman, we welcome our colleague from the House, and I just wonder if I might make an observation or two, and then pose a question.

In dealing with this legislation, members have to draw on their own personal experience. I have now been fortunate to succeed in two Senate campaigns. During my second campaign, about—and do not hold me to the date—4, 5 weeks, I think, before the election date, I recognized that I had sufficient funds. And I said publicly to Virginians that I did not require any more funding. Indeed, the funds ceased to come in, and our campaign of several million dollars ended up as best we could without trying to accumulate any substantial surplus.

Now, I feel that while these hearings are very important, and I am participating in them, and I commend the chairman for holding them, I believe the issue of just singling out the PAC's and indicating their influence has been somewhat exaggerated. The problem I see coming up here is that if you look at the total pie of a campaign, a portion from PAC's, a portion from individuals, and in some instances persons contribute their own funds, and if you reduce the PAC's, and that does not trouble me a bit, if that is the will of the Congress to reduce the amount that they can contribute, who is going to fill in that part of the pie that is needed for the total campaign? Where does the additional funding come from?

My colleagues have testified here this morning, and I agree with them, that too much of our time is expended now on fundraising. I mean I just finished a campaign a year or so ago, and this year I guess I have been to 25 or 30 fundraisers for my colleagues. So, as soon as I complete it, I go right back on the treadmill helping my colleagues in expending the time.

So my question to you is if a candidate feels a need, for *x* number of dollars, and PAC's are reduced, who fills the void and where do the funds come from?

Mr. SYNAR. Well, hopefully, reducing what PAC's can contribute will lower the need for the great amount of moneys being spent in Senate and House races.

Senator WARNER. I think we are being misleading to ourselves to have that assumption.

Because the candidates say they are driven by polls, what he hears or she hears, and they need that money for media, and that is the main, as you well know, the main cost today of campaigns is primarily the television and other related media avenues. I do not see why——

Mr. SYNAR. Let us assume you are right in the fact that the campaigns will not cost less. I think there is a second benefit by limiting PAC's, and that is that the elected official responsibility and their first allegiance will be to the voters themselves and their constituents, the ones the representative represents, versus special interest groups which may or may not have anything to do with the people back home. So, even if the campaigns are as expensive as they are today, at least the candidate's first allegiance is to the people back home and a wall built on special interest has not been built between the elected official and the people back home.

Senator WARNER. Yes. But in fairness, and I am sure it has been brought out in this hearing this morning, a PAC is a composite of individuals. Then a PAC contribution of $5,000 represents the contributions of literally hundreds, maybe thousands of individuals through their company business, or whatever the entity may be, toward that contribution.

So while it may be the, should we say general, I do not know the name of it, the General Electric fund PAC, in essence it is the composite of hundreds, indeed thousands of individual contributions. So it is their way of expressing support for a candidate through the PAC system.

But I come back to the central question. The thing that is driving the equation is the amount of time that we are expending now on raising money and not directly related to the cost of the campaigns.

Mr. SYNAR. I would make two arguments. First of all, David Boren and I are not arguing for the elimination of PAC's. We think the PAC's can serve a vital function, and I think you point out what that function is; more people being involved.

Regrettably, I think that of the 4,000 PAC's that have evolved in the last decade, you would be hard pressed to see more than 20 percent that really go to their members on a regular basis to find out in the individual States and congressional districts whether the people in that district sincerely want contributions going to a particular individual.

What we are trying, Senator Warner, is this. We are trying to get to a more level playing field. In other words, I think it is regrettable, I think it is a crime that somebody can come to Washington tonight on a 4 o'clock plane. Get off that plane, and make 10 stops here in Washington, DC, and go home with over $150,000 to $200,000 and run for Congress against Mike Synar without ever having raised one penny back in Oklahoma. I think that is a crime. I think it really does two things.

One, it sets a member in motion that he is locked up to these special interests before he gets elected. And, second, the candidate's allegiance is not to the people back home but to people in Washington.

Your point is that we are spending too much darn time with this and, you are absolutely right. You know, my colleagues in the House are even more under the gun than Senators because they must run every 2 years. I mean they just basically get out of one campaign cycle and have to go on to the next.

You think it is bad on our end. You talk to the people that we have to get the money from. They are tired of raising money. They are absolutely tired of it. Their goal is to be a lobbyist and to provide information to Members of Congress to move this Republic forward. Most of them will tell you right now, they spend one-half to three-quarters of their time raising money, and only a quarter of their time doing the job which they are really supposed to be doing, which is providing information.

I think if you look at the numbers from just 1978 to today and you see the amount the cost of campaigns have increased just in that limited period of time, and the growth of PAC's, I think you are going to see two parallel lines growing the same way. I would make the argument that it has been because of the growth of PAC's and their contributions that we have had this exponential growth in cost of campaigns too.

Senator WARNER. Well, I direct this to my distinguished Chairman.

As we perceived in the course of these hearings, while PAC's at the present time may be the focal point of interest, I think the Chair recognizes that indeed it is the compulsion to raise these funds which has given rise to the need for the growth of PAC's. And we had better go back and focus what attention we can on the issue of how to cutback the overall expenditures if, indeed, it is possible. I am not sure.

The CHAIRMAN. Well, of course, Senator Boren, in his testimony here this morning said that it was not the need, it was the fact that the availability of the money was creating the appetite; that the political campaign expenditures have risen more rapidly than the cost of campaigns. And that the general level of the economy has not increased anything like the amount of campaign funding.

For example, Senator Eagleton, at an earlier hearing, testified that his 1980 campaign cost was $1 million; that if he were running this year, he would anticipate a campaign that would cost $4 million. That is a quadrupling in costs that is far in excess of the growth in the cost of living for this time.

Senator WARNER. What is the root cause of that quadrupling?

The CHAIRMAN. That is the question I put to Senator Boren. It is a chicken and egg question, is it the fact that costs have increased or that the availability of money has increased?

Senator WARNER. But if you say the availability of money, it seems to me that most campaigns end up somewhere on the margin of a break even or slight deficit or a slight surplus.

Now, there was an article, I think, Common Cause ran the other day, pointing out certain Members of Congress who did generate a surplus. That is a collateral question that we may have to deal with some day.

But if a candidate expends all he or she takes in, I have to believe that that expenditure was for the need to assure a victory, and that they just were not foolish to go out and buy campaign television time to perhaps get an extra point or two in the final tally.

Mr. SYNAR. Senator Warner, I think what you are saying is that if candidates do not raise any more money than is necessary, the perception will be that these offices are not for sale. I do not want to suggest, nor do I think anyone is suggesting that Congress is for sale.

The CHAIRMAN. Do you really want to make that statement?

Mr. SYNAR. Let me clarify my last point. I would suggest that it would be naive to think a person could run for the U.S. Congress in this country today for less than $200,000. And it would be naive to think that running for U.S. Senate in this country, any State in the Union, even the smallest, would cost less than $1 million dollars.

Now, what we have done——

The CHAIRMAN. You are not saying that the offices are for sale?

Mr. SYNAR. No; I did not say that. That is why I prefaced my remark. I would not say that. What I am saying is that the availability of immense sums of money has made it very difficult for someone who is not from a rich background, or who does not have a tie-in with special interests of ever seeking office either in the House or Senate. That is not what we want. And I think what we have to do is exactly what you pointed to. Do not look just at PAC's, let us look at all campaign finance reform, the cost of campaigns, the media, everything. Let us look at it all. And that is why the Boren-Synar bill, and the Mathias bill, and some of the other bills may be combined. None of these bills are perfect, but at least they are starting points that I think we ought to look at.

Senator WARNER. Well, do you feel that the proliferation of PAC's, the spending of PAC money has been one of the causes to drive up the cost of the campaign?

Mr. SYNAR. Absolutely. No question about it.

Senator WARNER. And what does the candidate, why does he or she feel that they have to spend that added money?

Mr. SYNAR. Well, do you want a Democratic perspective or Republican perspective?

Senator WARNER. I do not care which perspective you put it in.

Mr. SYNAR. Well, if you are a Democrat and you are sitting there looking at your opponent——

The CHAIRMAN. John and I both have to be elected by Democrats as well as Republicans.

Mr. SYNAR. I understand that. But when the Republican campaign committee can give the maximum, and the Democrat committees go begging, it is pretty difficult.

Senator WARNER. Now, wait a minute. That campaign committee is not necessarily a PAC.

Mr. SYNAR. I understand that.

Senator WARNER. I want to make it very clear.

Mr. SYNAR. I think what you are trying to say and what I am saying is exactly the same thing. Let us not limit our efforts to looking at PAC's, let us look at everything. Let us see if PAC's are the ill. If they are not, then let's find the ill and try to cure it.

The bottom line of this is the access into the electoral process, not only for the voter who wants to have influence, but also for the person who wants to run for office which finds it now too expensive to do that at both the congressional and Senate level.

The **Chairman**. I want to thank the witness for coming over, and I think your contribution has been very helpful.

Thank you very much.

Mr. **Synar**. Thank you, Mr. Chairman.

The **Chairman**. There being no further business before the committee, the committee will stand in recess subject to the call of the Chair.

[Whereupon, at 12:25 p.m., the committee adjourned, subject to the call of the Chair.]

# PROPOSED AMENDMENTS TO THE FEDERAL ELECTION CAMPAIGN ACT OF 1971

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THURSDAY, MARCH 27, 1986

U.S. SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
*Washington, DC.*

The committee met, pursuant to call, at 9:50 a.m., in room 301 of the Russell Senate Office Building, Hon. Charles McC. Mathias, Jr. (chairman) presiding.

Present: Senators Mathias, Warner, and Simon.

Staff present: John B. Childers, staff director; John F. Rixey, Jr., majority counsel; William McW. Cochrane, minority staff director; Gerald W. Siegel, minority chief counsel; John K. Swearingen, director, technical services; Ann B. Cook, chief clerk; Carole J. Blessington, assistant chief clerk; Gerald Gereau, chief investigator; Dennis G. Doherty, auditor; Beth Cady, professional staff member; Waitus A. Dowless, professional staff member; Gail S. Martin, minority professional staff member; Elaine W. Milliken, elections counsel; Harriet L. Robnett, elections deputy counsel; John L. Sousa, minority elections counsel; Jennifer J. Nelson, elections staff assistant.

## OPENING STATEMENT OF SENATOR CHARLES McC. MATHIAS, JR., CHAIRMAN, COMMITTEE ON RULES AND ADMINISTRATION

The CHAIRMAN. The committee will come to order, with the apologies of the chairman for delaying the opening of proceedings. The day started early, but apparently not early enough.

The committee today meets to receive testimony on proposals to amend the campaign finance laws. Over the past 5 years we have heard from an array of witnesses on the past, present, and future of campaign finance reform. A question that must be in the minds of many who have gathered in this room today is: As a practical matter, what are the prospects for enactment of any real reform legislation?

I have been one of those who has called for reform of the current system. But we have faced a virtual stalemate in campaign finance reform during recent years. There are some signs that the stalemate may be, if not broken, at least beginning to break up.

As recent debate in the Senate and testimony in this committee have shown, concern with the way in which we currently fund congressional campaigns has become widespread.

I see on the front row, and waiting to be the first witness, which we will have immediately, the Senator from Arizona, and I recall vividly his previous testimony in which he called the current state of campaign finance a "crisis of liberty."

And with that introduction I will put the rest of my opening statement in the record, and call on the Senator from Arizona.

[Senator Mathias' opening statement follows:]

### STATEMENT OF SENATOR CHARLES McC. MATHIAS, JR.

The Senate Committee on Rules and Administration meets this morning to receive testimony on proposals to amend the campaign finance laws. The committee over the past five years has heard from an array of witnesses on the past, present, and future of campaign finance reform. A question that must be in the minds of many in this room: what are the prospects of Congress enacting reform legislation?

While I have been one of those calling for reform of the current system, we have faced a virtual stalemate in campaign finance reform in recent years. There are signs that that stalemate may be broken. As recent debate on the Senate floor and testimony before this committee show, concern with the way in which we currently fund congressional campaigns has become widespread. Our first witness this morning, the distinguished senior Senator from Arizona, has called the current state of campaign finance a "crisis of liberty."

There are some who say that only a major scandal in the financing of Federal campaigns will provide the impetus for congressional action. That does not have to be the case. From the record before us, it is apparent that there are problems in the current system. It is beyond dispute that campaigns costs have increased astronomically. It now takes an average $3 million to win a Senate race.

The growing role of political action committees is also well documented. It is not simply that PAC's have increased in numbers—from 600 to roughly 4,000—nor is it simply the growing volume of PAC dollars in the process—PAC's contributed some $105 million to congressional candidates in the 1984 election. There are more disturbing trends. The data show that 72 percent of PAC money goes to incumbents while challengers receive only 16 percent. A witness at hearings last November submitted figures that showed a tripling of PAC gifts to members of tax-writing committees in 1985 compared to 1983. Contributions to members of committees dealing with defense quadrupled in the space of four years.

Another witness at the November hearing drew a useful distinction in saying that a system can be corrupt, without ascribing corruption to either candidates or to officeholders. What we have is a system in which it has become increasingly difficult for candidates to concentrate on getting their message across to voters and for officeholders to perform the job they were elected to do.

What are the solutions to these problems? Although some see as at least an initial stage of reform the need to curb special interests, I have introduced legislation, currently cosponsored by two other members of this committee, the distinguished Senator from Illinois and the distinguished Senator from Tennessee, that proposes a more fundamental reform: limiting campaign spending through public funding of Senate general election campaigns.

The question of cost will of course be raised at a time when much of our attention is focused on deficit cutting and the consequences of Gramm-Rudman-Hollings. The legislation I have introduced would cost from $35 to $50 million per year and would be funded from the voluntary taxpayer checkoff. Consider the fact that the tax credit claimed for political contributions now costs the Treasury in lost revenue approximately $265 million per year. Given the problems we face in the current system, maybe we are not getting our money's worth.

Although I appreciate that not all of the witnesses appearing before the committee share this perspective, I remain convinced that Congress must act, and act promptly, to control campaign costs and to eliminate the perception that special interests have indue influence in the process. I welcome the participation of today's witnesses in these discussions on the future of campaign finance reform.

## TESTIMONY OF HON. BARRY GOLDWATER, A U.S. SENATOR FROM THE STATE OF ARIZONA, ACCOMPANIED BY J. TERRY EMERSON, COUNSEL

Senator **GOLDWATER**. Mr. Chairman, I congratulate you for continuing the series of hearings on campaign financing and how the process might be changed, and I thank you for allowing me to appear before you.

As important as deficit reduction and tax reform may be, I do not think there is anything more fundamental to preserving our system of free government than to secure the integrity of the election process and to restore public faith in that process. Freedom in our country depends upon the successful functioning of self-government.

If the people do not vote or do not trust the outcome of elections, self-rule falls apart. If political candidates and elected officials owe their allegiance not to the people but to a few groups or individuals who donate and spend the most money, the whole purpose of regular elections and government by consent is corrupted.

Mr. Chairman, I am concerned that the election system in the United States is fast moving in this direction. As far as the general public is concerned, it is not "We, the People," but political action committees and moneyed interests who are setting the Nation's political agenda and are influencing the position of candidates on the important issues of the day. It is the proliferation of pollsters, direct mailers, and professional consultants, with their packaging and marketing of candidates, who are changing the character of campaigns and driving the quality down.

The symptoms of these political ills are rampant. The most expensive election in history was held 2 years ago. The total number of political action committees has quadrupled and PAC donations to congressional campaigns rose five times in the last 10 years PAC gifts furnished 26 percent of all moneys raised in the congressional races of 1984, the highest percentage in history.

The answer to this sorry state must be comprehensive. I suggest the following actions:

First, we must put a ceiling on total spending by all sources in Federal elections.

Second, fundraising expenses should be included in those ceilings.

Third, spending ceilings should apply to candidates themselves, political parties, PAC's, and independent expenditures.

Fourth, more timely and complete public reports should be filed by candidates.

Fifth, in-kind expenditures of labor unions should not be funded out of compulsory union dues.

Sixth, we should reduce the length of political campaigns.

Seventh, election day should be extended to a full 24 hours.

Eighth, election day should be designated as a national holiday. And, Mr. Chairman, my staff turned over to me this morning an interesting document that I had forgotten all about: In 1972, 1973, and 1974 Hubert Humphrey and I had introduced a Senate bill, S. 1400, that would make election day a legal holiday. It passed the Senate, but nothing ever came of it in the House.

Ninth, the polls should open and close simultaneously across the Nation in Federal elections.

Now, Mr. Chairman, I have introduced a bill, S. 59, that sets forth one approach to these ends. Also I am a cosponsor of Senator Boren's bill, S. 1806, which addresses the problem of excessive spending by PAC's. And I am closely interested in your bill, S.

1787, which would control political spending by combining expenditure limits with public funding of Senate general election campaigns. But I do not favor the solution some have offered of raising spending limits for individuals or political parties. The answer, Mr. Chairman, is not more campaign money.

The political merchants feed on greater spending. It is not only a question of who spends the money, but how it is spent. Allowing more spending by any source may further distort the quality of campaigns.

Mr. Chairman, one difficulty I have with public financing is its expense. If S. 1787 was in effect, it could have required almost $50 million annually to fund the two major candidates in each of the 34 Senate races for this fall. If third-party or independent candidates qualified in any State, it would add further to the burden on the Treasury. And if the House of Representatives adopted a similar measure, using $200,000 as the ceiling for each of the 435 congressional districts, it could require up to an additional $87 million annually to fund all major party campaigns.

If these large sums are going to be provided out of Federal funds, we should be certain that the public will get its money's worth. By this, I mean the public financing bill should be comprehensive enough to cover all the needs I mentioned earlier: limits on independent spending, improved reporting, shorter campaigns, in-kind limits, and expanded voting opportunities.

And while I would prefer to meet the *Buckley* v. *Valeo* decision head on, I am willing to consider ways to combine elements of our two bills and come up with an improvement over the current way elections are financed. For example, I would be glad to accept the ceilings in S. 1787, instead of the limits provided in S. 59. Had the spending limits in S. 1787 been in effect, I believe they would have reduced actual spending, adjusted for inflation, in at least 45 Senate campaigns since 1978. This is exactly the kind of limits we need.

Mr. Chairman, I hope that those of us who believe in the need for controlling the cost of campaigns will join together to develop a common piece of legislation we can all agree on. If present trends continue, we may permit the power of determining the outcome of elections to become lodged in the hands of a few wealthy persons or groups, who are not accountable for their actions. Then all control is lost. As I said in earlier testimony, this is the road to anarchy.

And, Mr. Chairman, I have a factsheet to accompany my statement, and a list of combined primary and general election spending limits for each State put forth in S. 59, that I would like to ask be made a part of the record.

The CHAIRMAN. Without objection, they will be made part of the record.

Senator GOLDWATER. Thank you very much.

[The prepared statement by Senator Goldwater follows:]

### PREPARED STATEMENT OF SENATOR BARRY GOLDWATER BEFORE THE SENATE COMMITTEE ON RULES AND ADMINISTRATION

Mr. Chairman, I congratulate you for continuing the series of hearings on campaign financing and how the process might be changed, and I thank you for allowing me to appear before you.

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If the people do not vote or do not trust the outcome of elections, self-rule falls apart. If political candidates and elected officials owe their allegiance not to the people, but to a few groups or individuals who donate and spend the most money, the whole purpose of regular elections and government by consent is corrupted.

Mr. Chairman, I am concerned that the election system in the United States is fast moving in this direction. As far as the general public is concerned, it is not "we the people," but political action committees and moneyed interests who are setting the Nation's political agenda and are influencing the position of candidates on the important issues of the day. It is the proliferation of pollsters, direct mailers, and professional consultants with their packaging and marketing of candidates, who are changing the character of campaigns and driving the quality down.

The symptoms of these political ills are rampant. The most expensive election in history was held two years ago. The total number of PAC's has quadrupled and PAC donations to congressional campaigns rose five times in the last ten years. PAC gifts furnished 26 percent of all moneys raised in the congressional races of 1984, the highest percentage in history.

The answer to this sorry state must be comprehensive. I suggest the following actions:

1. We must put a ceiling on total spending by all sources in Federal elections.
2. Fund raising expenses should be included in those ceilings.
3. Spending ceilings should apply to candidates themselves, political parties, PAC's and independent expenditures.
4. More timely and complete public reports should be filed by candidates.
5. In-kind expenditures of labor unions should not be funded out of compulsory union dues.
6. We should reduce the length of political campaigns.
7. Election day should be extended to a full 24 hours.
8. Election day should be designated as a national holiday.
9. The polls should open and close simultaneously across the nation in Federal elections.

Mr. Chairman, I have introduced a bill, S. 59, that sets forth one approach to these ends. Also, I am a cosponsor of Senator Boren's bill, S. 1806, which addresses the problem of excessive spending by PAC's. And, I am interested in your bill, S. 1787, which would control political spending by combining expenditure limits with public funding of Senate general election campaigns. But, I do not favor the solution some have offered of raising spending limits for individuals or political parties. The answer is not more money.

The political merchants feed on greater spending. It is not only a question of who spends the money, but how it is spent. Allowing more spending by any source may further distort the quality of campaigns.

Mr. Chairman, one difficulty I have with public financing is its expense. If S. 1787 was in effect, it could have required almost $50 million annually to fund the two major candidates in each of the 34 Senate races set for this fall. If third party or independent candidates qualified in any State, it would add further to the burden on the Treasury. And, if the House of Representatives adopted a similar measure, using $200,000 as the ceiling for each of 435 congressional districts, it could require up to an additional $87 million annually to fund all major party campaigns.

If these large sums are going to be provided out of Federal funds, we should be certain that the public will get its money's worth. By this I mean the public financing bill should be comprehensive enough to cover all the needs I mentioned earlier: limits on independent spending, improved reporting, shorter campaigns, in-kind limits, and expanded voting opportunities.

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## S. 59

[By Senator Goldwater]

### FACT SHEET

The short title of the bill is The Federal Election Campaign Expenditure Limits Act.

The bill would:

Limit spending by Presidential candidates to $15 million in primary campaigns and $25 million in general elections.

Shorten the general election for Presidential races to six weeks.

Abolish public financing of Presidential campaigns.

Restrict Senate campaign spending to 12 cents per voting age citizen in primary elections and 22 cents per citizen in general elections, with a minimum ceiling of $400,000 in States having the least population.

Set the spending ceiling per candidate in each House race at $400,000 in single-member states and $200,000 in other districts.

Repeal automatic inflation increases of campaign contributions and spending limits.

Put the costs of fund-raising under the same ceiling as other expenditures.

Set limits on individual spending of $5,000 per campaign race.

Require candidates and political committees to file an additional public report ten days before elections and to supply more complete information.

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[S. 59 By Senator Goldwater]

*Federal Election Campaign Expenditure Limits Act—Combined Primary and General Election Spending Limits for Each State*

| | |
|---|---|
| Alabama | $956,080 |
| Alaska | 400,000 |
| Arizona | 700,740 |
| Arkansas | 561,000 |
| California | 6,214,180 |
| Colorado | 756,500 |
| Connecticut | 808,520 |
| Delaware | 400,000 |
| Florida | 2,777,460 |
| Georgia | 1,373,600 |
| Hawaii | 400,000 |
| Idaho | 400,000 |
| Illinois | 2,837,640 |
| Indiana | 1,327,360 |
| Iowa | 711,960 |
| Kansas | 598,060 |
| Kentucky | 830,800 |
| Louisiana | 1,032,100 |
| Maine | 400,000 |
| Maryland | 1,084,600 |
| Massachusetts | 1,493,960 |
| Michigan | 2,228,360 |
| Minnesota | 1,015,920 |
| Mississippi | 593,300 |
| Missouri | 1,237,600 |
| Montana | 400,000 |
| Nebraska | 400,000 |
| Nevada | 400,000 |
| New Hampshire | 400,000 |
| New Jersey | 1,884,960 |
| New Mexico | 400,000 |
| New York | 4,472,020 |

| | |
|---|---|
| North Carolina | 1,501,780 |
| North Dakota | 400,000 |
| Ohio | 2,649,620 |
| Oklahoma | 781,660 |
| Oregon | 664,360 |
| Pennsylvania | 3,020,220 |
| Rhode Island | 400,000 |
| South Carolina | 778,940 |
| South Dakota | 400,000 |
| Tennessee | 1,147,500 |
| Texas | 3,669,620 |
| Utah | 400,000 |
| Vermont | 400,000 |
| Virginia | 1,386,520 |
| Washington | 1,072,360 |
| West Virginia | 478,720 |
| Wisconsin | 1,177,760 |
| Wyoming | 400,000 |

The CHAIRMAN. Senator Goldwater, we thank you for that testimony, and I think you have raised, as you always do, some very significant points.

I like the concept of taking on the *Buckley-Valeo* decision head on myself, because, I think, the Court ought to have an opportunity to go back and replow that ground. It seems to me that good constitutional arguments could be made for altering that rule, but, pending that, we can do some things within the current framework of constitutional law decisions.

I am glad you raised the question of getting our money's worth out of the system. Had I taken the time to deliver my full statement instead of putting it in the record at the outset, I would have anticipated your question in that regard.

Now, you are about right that the bill that Senator Simon and I have introduced would cost perhaps as much as $50 million. It might be as little as $30 million. But we won't argue over the price tag; it's somewhere in that ballpark.

The interesting thing is that under the current system of present law, the Treasury reports that the tax credit that is claimed for political contributions, under our existing system, is costing in taxes foregone, revenue that would otherwise be collected, $265 million a year.

So our bill would be a substantial saving. And I would submit that under the present system, where we are having a tax outlay of $265 million a year, we simply are not getting our money's worth. We are getting all the detrimental effects, all the problems, related with a wide-open system, and we are not getting the kind of disciplinary restraints that ought to go with it. We are getting the worst of both worlds: the Treasury is losing too much money, and the political system is just overflowing with cash that oughtn't to be there. And the net effect is debauching the whole political process.

That's one of the reasons that I think, at least until we can take Valeo on, head on, that the courts left us with the public-finance option as the only current means of relief. Under those circumstances, I think it could be a bargain, even at $50 million a year. That would be saving $215 million.

Of course, if you extend it to the House, you are right: it would cost more. But even that would be still within the savings.

Now, on the question of the Boren bill, I'd like your assessment, as one of the wise heads around here, on what the political risk is if we were to pass the Boren bill, whether or not that might be viewed as a solution to the whole problem rather than simply relieving one of the current symptoms, and that we would therefore lose the momentum for more fundamental change.

What do you think about that?

Senator GOLDWATER. I don't think the Boren bill would be the solution to the whole problem. I think it would be a good start toward a solution.

This whole problem of financing campaigns has gotten so big and so out of bounds that it's hard for me to envision any one piece of legislation, or even 1 year, in which we could make the changes necessary to get campaigning—I hate to use the word "back," but I will—back to what it used to be.

It has become, as you know, a very, very major business. I have no idea how many firms there are in Washington or New York or Los Angeles which are available to candidates at tremendous fees to dispense what knowledge they have—and that knowledge is somewhat doubtful—to put the candidate through the expensive experiences he will go through.

I recall when I first ran, you didn't have to worry about having your hair all fluffed up and you didn't have to worry about what color necktie you wore, just so you had one on, or what shirt; you didn't even care much about the language you used, just so you got the message across.

But today it's like acting in a play on Broadway: you are told what to say, when to say it, how to say it. And if you do everything just right, you might get that person's vote in that particular block—and the next block it's entirely different.

I don't like that kind of politicking in my country; I like the old-fashioned way of politicking where you even went head to head, block to block, and argued it out—and then the best man won. Not the most expensive man.

Lord, I think the first time I ran for office it cost me $45,000, and I wasn't quite sure there was that much money in the world, and if I decided to run again next year it would cost me at least $2.5 million, and I would waste exactly—well, maybe two-thirds of it—I used to say half, but that's gone up.

The CHAIRMAN. You've mentioned, in your statement, the role of PAC's, and, of course, the data there are astounding: they increased from about 600 to roughly 4,000, the numbers of PAC's. But the disturbing thing there is not the PAC's themselves, but the way they are operating.

One of the things that I find of concern is that 72 percent of the PAC money goes to incumbents; challengers, according to the testimony we had last November, only got about 16 percent—I'm not sure where the difference goes.

Senator GOLDWATER. When you get fooling around with the percentages given among various candidates by PAC's, you run I think into a constitutional problem—I'm not definite on that. We can, however, limit the total amounts of their spending. But the first PAC's that I knew of were corporate organizations where members of the corporation were encouraged to put money into a corporate fund, and then a meeting would be held, at which time they would decide how many Democrats would get it, how many Republicans would get it.

I think that probably is constitutionally all right—I wouldn't want to bet on it.

But, to answer your question, naturally the money is going to go to incumbents—they have the best chance of getting reelected. If you want a job done, you want the guy that's going to be in there doing it.

The CHAIRMAN. So the system is just naturally loaded on the side of the incumbent.

Senator GOLDWATER. I would say the incumbent is always running with the 7's loaded.

The CHAIRMAN. Senator Simon.

Senator SIMON. Yes. First of all, I want to thank Senator Goldwater for his testimony. On this issue, Senator Goldwater, in my heart I know you are right. [Laughter.]

And let me just add: you touched on one point that is part of what we have done, that I think is extremely important. And that is because of this huge amount that we spend, we now hire pollsters and everybody is holding his finger to the wind, and one of the big reasons we have this huge deficit problem is we have done exactly what the people want: they want more services and lower taxes, and we have given them both. And we have, as a result, this huge deficit.

I would just add, as I am listening to this dialog between two fine reflective Senators in this body, both of whom are going to be retiring after this year—but we ought to make sure that we have a vote on something substantial this year so that we can get your input. You two have learned something over the years that the rest of this body ought to be hearing about—we need your vote, we need your input.

And I think, Mr. Chairman, we ought to make sure that we, No. 1, get a vote on the whole question of the possibility of public financing, and, if we should not succeed on that, then something more limited. But, I think, clearly what you have said, Senator Goldwater, just makes eminent good sense, and it is the direction that we have to be going one of these days.

And I just got a note that our Judiciary Committee meeting is canceled, Mr. Chairman, so I am going to stay here and listen to the rest of the witnesses.

I have no questions. And I just applaud and appreciate Senator Goldwater's testimony.

The CHAIRMAN. Well, I have just one further question. One of the items in your bill is to shorten the general election for Presidential races, which I agree is an extremely important objective.

Howard Baker had a concept that you could do that really without legislation, if the FEC would prohibit any expenditures by candidates prior to at least the calendar year in which the election was being held—and, of course, we've got 1988 candidates operating and spending money already.

The second thing he would advocate would be that all the Presidential primaries be condensed into a limited period of time, 1 month or 6 weeks, and that the parties could do that—you wouldn't need public legislation, if the parties would agree to seat delegates only elected within that time span, that could happen.

And he had a third suggestion which was not related to the time-span question, but to the general cohesion of the political system, that Governors and Members of Congress should be ex officio members of the party conventions so that you give some continuity and some cohesion to the political system, so you didn't have the conventions totally unrelated or less related to the rest of the political parties.

I wondered if you thought those kinds of steps would be useful in trying to pull the political system together more tightly.

Senator GOLDWATER. Well, I think you are addressing yourself to shortening the elections. If England can elect a Prime Minister in 2 weeks, I don't know why we can't elect a President in less than 4 years. We have candidates running for President already. I made the proposal that we ask both major parties to hold their conventions after Labor Day, nominate, and then have the election within the next 6 weeks. And, I think, that's too long. I think we subject the American people to too much rubbish; we subject the candidates and the parties to too much money. And I think, by shortening, we would get better results.

The CHAIRMAN. I don't think there is any question that we would have a better result for the American people if we could do it—and we value your support and continuing interest on this project. I share with Senator Simon the hope that we can get some action while you and I are still here to cheer it on.

Thank you very much.

Senator GOLDWATER. Thank you very much, Mr. Chairman.

The CHAIRMAN. Our next witnesses, who will appear together: Mr. Archibald Cox, a distinguished witness who has been with us before, and Mr. Fred Wertheimer, the president of Common Cause.

Gentlemen.

## TESTIMONY OF ARCHIBALD COX, CHAIRMAN, AND FRED WERTHEIMER, PRESIDENT, COMMON CAUSE

Mr. COX. Mr. Chairman, we appreciate very much the opportunity to appear before the committee this morning.

We have filed a full statement outlining Common Cause's views about election finance reform, pointing out a number of specific shortcomings in the present laws, and suggesting remedies. And we repeat there our long-term position that the ultimate solution must include some combination of public financing and restrictions on total expenditures by a candidate for election to either House of Congress.

This morning I want to emphasize an imperative present concern: The urgent need for the Senate to pass at this session a bill putting ceilings on the total aggregate amount of PAC contributions that a candidate may receive, a ceiling, in effect, on PAC influence.

The amount of money, and therefore the influence, of PAC's is growing at a frightening rate, so frightening that one wonders whether government for PAC's and PAC money is not likely soon to replace government of the people—unless the Senate and the Congress act.

There are other serious faults in the present laws regulating campaign finance. Reasonable men and women can disagree as to what is the complete remedy, but I think just about every serious proposal would put some direct or indirect restraint on the role of PAC money. There is a large and growing consensus that putting a cap on the total amount of PAC money a candidate can receive is a way to deal with that specific evil now. The Boren-Goldwater bill fastens on that core of broad agreement: It has brought support from Senators on both sides of the aisle, with very different political philosophies; there has been wide and strong editorial support; the public is aroused by the PAC problem—except, sad to say, in those circles where things have quieted down into a cynical acceptance.

The Senate, therefore, I submit, should act now upon this point of wide agreement, and then come back to the subject with a view to developing a comprehensive remedy for the evils that presently vex our system of campaign finance.

To fail to act on the PAC question now risks allowing the volume, the proportion, of PAC money to become so important in the conduct of election campaigns that the whole country would simply be helpless to do anything about something which, as Senator Goldwater just said—and I agree—is inimical to representative government.

The CHAIRMAN. Dean Cox, those bells and lights indicate a rollcall vote in the Senate—and I have delayed departing until the moment in which I think my physical capacity to jog that far is just about at the——

Mr. Cox. You waited right to the end of my statement. It's Mr. Wertheimer now.

The CHAIRMAN. Well, we will ask Mr. Wertheimer if he will be patient enough—and Senator Warner, who is here, and who is going to come back, and he may get back before I do and we will resume immediately as soon as he returns.

I'll be just as quick as I can.

[Brief recess.]

Senator WARNER [presiding]. The chairman has left to vote and asked if I would resume the hearing, and I understand we will now receive a direct presentation from Mr. Wertheimer on behalf of Common Cause.

Mr. WERTHEIMER. Thank you, Senator Warner.

Senator WARNER. We welcome you again before this committee.

Mr. WERTHEIMER. Thank you. As Mr. Cox said, we have a full statement that we have asked to be submitted into the record.

Senator WARNER. Without objection.

Mr. WERTHEIMER. And we have some attachments with that.

Senator WARNER. Without objection.

Mr. WERTHEIMER. Thank you.

[The following material was received for the record:]

## PREPARED STATEMENT OF ARCHIBALD COX, CHAIRMAN, COMMON CAUSE, AND FRED WERTHEIMER, PRESIDENT, COMMON CAUSE

Mr. Chairman and Members of the Committee, we appreciate the opportunity to testify before the Rules Committee on legislation to amend the Federal Election Campaign Act. The issue of campaign finance reform has been of central concern to Common Cause throughout its fifteen-year history and we are pleased to present our views for the Committee's consideration.

Common Cause has supported comprehensive reform of the campaign finance system, including public financing for both presidential and congressional elections. Our-long term goal remains the enactment of a system of public financing for congressional elections similar to that already in place for presidential races, including spending limits, limits on the use of personal wealth in elections, and other provisions designed to address independent expenditures and protect the integrity of current PAC contribution limits.

At the same time, we believe that Congress should no longer defer action to curb the growing and dangerous role which political action committees (PACs) are playing in the electoral and congressional decisionmaking processes. A decade of congressional inaction on this important question has served to undermine deeply the public confidence in our electoral system and to allow the growing influence of PACs to continue unabated. The time is past due to restore public faith in the integrity of our political process by limiting the influence of special interest money.

Common Cause strongly supports S. 1806, the legislation introduced by Senators David Boren (D-OK) and Barry Goldwater (R-AZ) to place an aggregate limit on the total amount of contributions which congressional candidates may accept from PACs. While S. 1806 is not a comprehensive cure for all the ills that plague the current campaign finance system, it strikes forcefully at the heart of the problem—the increasing dependence of Members of Congress on PAC contributions.

There is a pervasive unease in Congress today with the current campaign finance system and the growing dominance of PACs. Many Members publicly deplore the PAC system and are speaking out forcefully in support of reform. The Boren-Goldwater bill has garnered support from a wide-ranging, bipartisan group of cosponsors, whose views span ideological and party spectrums and who represent every region of the country. For the first time in many years, there is a real chance to make significant changes in the current congressional campaign finance system by enacting an aggregate limit on PAC contributions. We strongly urge the Committee to lend its support to S. 1806.

### THE PAC PROBLEM

The congressional campaign finance system is out of control and in need of fundamental repair. Major reforms are needed—and none is more important than coming to grips with the dangerous and growing role played by political action committees (PACs) in congressional elections and in the congressional decision-making process.

The last decade of congressional campaign financing has been marked by an exponential increase in the number of PACs formed by corporations, labor unions, trade associations, and other groups. In 1974, there were 608 PACs. Today there are nearly 4,000.

The increase in the number of PACs has, not surprisingly, also produced a tremendous increase in PAC contributions to congressional candidates. In 1974, PACs gave $12.5 million to congressional candidates. By the 1984 elections, their contributions exceeded $100 million, an eightfold increase in ten years.

This explosion in PACs can be traced directly to congressional action—and inaction—in 1974. Ironically, at the very time when Members of Congress were acting to clean up presidential elections, they opened the door for PACs to enter the congressional arena in an unprecedented way. Although Congress acted in 1974 to establish a system of public financing for presidential races, it was unwilling to take the last crucial step—to establish an alternative public source of campaign funds for its own races. While congressional public financing was passed by the Senate, the House narrowly rejected it by a vote of 187 to 228, and the provision was dropped in conference. By creating public financing for presidential races, but not for congressional elections, the 1974 amendments focused the attention and interest of PACs on Congress.

At the same time, in a major step backwards and over the objections of reform groups, Congress opened the door for an increased role in special interest giving by repealing a prohibition on the formation of PACs by government contractors. Business and labor supporters of PACs led the effort to overturn this prohibition. As a result of these actions, PAC contributions are a powerful vehicle for obtaining access and influence in the United States Congress.

The last decade's growth in PACs was no accident, and it certainly was not an unintended consequence of the 1974 law—the repeal of the provision prohibiting government contractors from forming PACs was intended to protect and enhance the role of PACs in financing campaigns, and it has.

The tremendous increase in the number of PACs has largely served to increase the ability of a single interest to bring pressure to bear on a congressional candidate or a Member of Congress.

For example, during the 1983-1984 election cycle: 117 food PACs (retailers, distributors, restaurants) contributed $3.8 million to congressional candidates; 112 insurance PACs contributed $4.2 million to congressional candidates; 111 oil and gas PACs (including producers, marketers, pipeline owners and refiners) contributed $4.6 million to congressional candidates; 274 labor PACs contributed $26 million to congressional candidates; 295 banking PACs contributed $3.6 million to congressional candidates; 128 real estate and construction PACs contributed $7.7 million to congressional candidates; 124 agricultural PACs contributed $4.5 million to congressional candidates; 99 communications PACs contributed almost $3 million to congressional candidates.

As Representative David Obey (D-WI) has observed, frequently in Washington "an issue affects an entire industry and all of the companies and labor unions in that industry * * * When that occurs, when a large number of groups which have made substantial contributions to members are all lobbying on the same side of a issue, the pressure generated from those aggregate contributions is enormous and warps the process. It is as if they had made a single, extremely large contribution."

A recent Common Cause study of PAC contributions to Members of the Senate Finance Committee showed that these 20 Senators received a total of $956,742 from energy-related PACs, $969,213 from insurance PACs, $1,153,857 from labor PACs and $300,120 from law PACs for their current or most recent election campaigns. The study demonstrates that dozens of PACs representing a given interest can and do provide very large sums to a Member of Congress, far in excess of the existing limits on giving by a single PAC. The potential impact on legislative decisions of such very large sums underscores the need for an overall cap on the amount of PAC money congressional candidates may accept.

PAC money also represents a far more important part of the average candidate's campaign funds than it did ten years ago. In 1974, 15.7 percent of congressional candidates' campaign money came from PACs; by the 1984 election, that proportion had increased to 29 percent.

Yet these numbers only begin to tell the story. The increased dependence on PAC contributions has been greatest for winners—those individuals who serve in Congress and who cast the votes which shape our daily lives. House winners in the 1984 elections received an average of 41% of their campaign dollars from PACs—the comparable figure ten years earlier, in 1974, was 26%. In the current Congress, over one hundred and fifty House Members received 50 percent or more of their campaign funds from PACs, including 20 of the 27 current committee chairs and party leaders. For Senators, PAC contributions are also becoming a more important source of campaign dollars. In the 1984 elections, 23 winning Senate candidates raised more than $500,000 each from PACs.

Some PAC advocates have suggested that the growth in PACs is an important new form of involving citizens in the political process. We strongly disagree. On the contrary, giving to a PAC is a form of participation in which the contributor's involvement often ends with the writing of a check. The decision on how that money is spent is often turned over to professional PAC managers. As University of Minnesota professor Frank J. Sorauf has noted:

"To understand political participation through PACs, we need also to note the nature of the participation . . . in a sense it buys political mercenaries who free the contributor from the need to be personally active in the campaign. It is one of the least active forms of political activity, well suited to the very busy or to those who find politics strange, boring or distasteful."

This is not the kind of "political involvement" which is healthy for a democracy such as ours.

In fact, the growth of PACs and the increased importance of PAC money have had a profoundly negative effect on two different parts of the political process—congressional elections and congressional decisionmaking. First, PAC money tends to make congressional campaigns less competitive because of the overwhelming advantage enjoyed by incumbents in PAC fundraising. The ratio of PAC contributions to incumbents over challengers in 1984 House races was 4.6 to 1; in the Senate, incumbents in 1984 enjoyed a 3 to 1 advantage in PAC receipts. This incumbents' advantage is true for all kinds of PAC giving—for contributions by labor groups, corporate PACs, and trade and membership PACs.

Second, there is a growing awareness that PAC money makes a difference in the legislative process—a difference that is inimical to our democracy. PAC dollars are given by special interest groups to gain special access and special influence in Washington. Most often, PAC contributions are made with a legislative purpose in mind. The late Justin Dart (former chairman of Dart Industries) once noted that dialogue with politicians "is a fine thing, but with a little money they hear you better."

Perhaps the most compelling commentary on the role that PACs are playing in Congress today comes from the Members themselves. More and more Members in both Houses and from both political parties are speaking out about the PAC problem.

"Senate Majority Leader Robert Dole (R-KS) has said: 'When these political action committees give money, they expect something in return other than good government. It is making it much more difficult to legislate. We may reach a point where if everybody is buying something with PAC money, we can't get anything done.'

"Senator Barry Goldwater (R-AZ) has observed: 'PAC money is destroying the election process. It is breaking down public confidence in free elections and it is ruining the character and quality of campaigns.

" 'As far as the general public is concerned, it is no longer "we the people," but PACs and the special interests they represent who set the country's political agenda and control nearly every candidate's position on the important issues of the day.'

"Senator John Stennis (D-MS) has said: 'We need a plan which brings the responsibility of these elections closer to the people at home, not further away. PACs tend to push the election machinery away from the people at home for whom a Representative or Senator is being chosen. These PACs step in at a key time with plenty of money and to a degree take over the election. There is no doubt about it; it can be done.'

"Senator Thomas Eagleton (D-MO) has pointed out that the present campaign financing system 'virtually forces Members of Congress to go hat in hand, begging for money from special interests whose sole purpose for existing is to seek a *quid pro quo*. The scandal is taking place every day and will continue to do so while the present system is in place.'

"Senator Gary Hart has noted: 'It seems the only group without a well-heeled PAC is the average citizen—the voter who has no special interest beyond low taxes, an efficient government, an honorable Congress, and a humane society. Those are the demands the PACs have drowned out * * *

'But there is a direct correlation between the amount of money, the places where it is being given, the membership on committees that are attracting that kind of money, and the kind of low quality legislation we are passing * * *'

"Representative Jim Leach (R-IA) has said: 'A government of the people, by the people, and for the people cannot be a government where influence is purchaseable through substantial contributions. It is simply a fact of life that when big money in the form of contributions enters the political arena, big obligations are entertained.'"

PAC gifts do not guarantee votes. PACs do not always win. But PAC contributions do provide donors with critical access and influence; they do affect legislative decisions and increasingly are dominating and paralyzing the legislative process. And they do contribute directly to public cynicism about the integrity and responsiveness of our national government.

In the last few years, something very important and fundamental has happened in both the Congress and the country as a whole—and that is the development of a growing awareness and recognition of the fact that the PAC system is a discredited system that must be changed. The question before the Committee and Congress is whether that growing consensus will be translated into effective legislative action to stem the rising tide of PAC money.

The Senate's overwhelming refusal to table the Boren-Goldwater amendment on December 3, 1985 is a clear demonstration that the PAC scandal has become a powerful national issue. For the first time in many years, there is a real chance to enact significant reforms in the current campaign finance system by putting a limit on the total amount of money which candidates for election to the House and Senate may accept from political action committees.

The Boren-Goldwater bill is not a comprehensive solution to all the problems that burden today's congressional campaign finance system. But it does strike directly at the single greatest problem: the growing and dangerous power of PACs. The central provision of the Boren-Goldwater bill is the establishment for the first time of an aggregate limit on the total amount of contributions which a candidate for election to the House or Senate may accept from all PACs. House candidates would be limited to $100,000 in PAC contributions, while Senate candidates would be limited to an amount ranging between $175,000 and $750,000, depending on the size of their state. The bill would also decrease the amount a single PAC may give to a candidate from $5,000 to $3,000 per election and increase the amount an individual citizen may give from $1,000 to $1,500 per election. Common Cause strongly urges the Members of the Committee not to miss this historic opportunity to support the enactment of aggregate PAC limits and the Boren-Goldwater bill.

## BUNDLING

The Boren-Goldwater bill would also make critically needed changes in current campaign finance laws to deal with the growing problem of PAC "bundling," a problem which threatens to undermine seriously the integrity of existing contribution limits on individual PACs.

Bundling is a practice by which PACs and other political committees gather contributions to a candidate from their members and turn them over to the candidate without counting the contributions against the statutory limits on what a political committee can give to a federal candidate. The Federal Election Commission (FEC) has interpreted existing law to allow this practice. As a result, bundling seriously undermines the contribution limits on political committees established in the Federal Election Campaign Act.

An article in the Wall Street Journal on October 10, 1985 outlined the bundling practices of Alignpac, a PAC of insurance agents established to lobby on the tax reform bill now pending before Congress. Records from the FEC show that Alignpac in 1985 gave Senate Finance Committee Chairman Robert Packwood a $1,000 PAC contribution. In addition, Alignpac collected from its members and turned over to Senator Packwood $215,000 in bundled contributions. While the limit on what an individual PAC can contribute to a candidate is $5,000, Alignpac, through bundling, was able to deliver $216,000 in contributions to Senator Packwood.

Other PACs are using bundling to contribute to candidates. A recent Common Cause survey of PAC giving in 1985 by top defense contractors shows that bundling is now being used by a number of these defense PACs to make contributions in addition to their PAC contributions. The Council for a Livable World, a group supporting arms control issues, has long used the practice of bundling to provide substantial contributions to Members of Congress.

A Common Cause analysis of the bundling practices of the National Repulican Senatorial Committee (NRSC) shows that during the 1983-84 election cycle, the NRSC bundled $3 million in contributions to Republican Senate candidates, five times the amount the NRSC was allowed to give these candidates in direct contributions.

The Boren-Goldwater bill would close this increasingly abused loophole by requiring that contributions bundled by a PAC or other political committee be counted against the statutory limits on what such a committee can give to a federal candidate. It is critically important that the Congress move decisively to close the bundling loophole, before it makes a mockery of existing PAC contributions limits.

## INDEPENDENT EXPENDITURES

The Boren-Golderwater bill would also require that candidates who are the subject of independent broadcast campaigns be provided with free response time to reply. This important provision is a narrow, constitutionally sound remedy to the serious problem of independent expenditures. It is identical to a provision contained in S. 1310, the Clean Campaign Act of 1985 introduced by the Chairman of the Senate Commerce Committee, Senator Danforth, the Committee's ranking member, Senator Hollings, and Senator Goldwater, Chairman of the Communications Subcommittee.

The present law limits contributions made directly to a candidate. Under the Supreme Court's decision in *Buckley* v. *Valeo,* the restriction is constitutional. The present law places no limits on expenditures undertaken independently by a PAC or an individual on behalf of or in opposition to a candidate. The extent of the power of Congress to forbid such expenditures is uncertain, because of decisions that Congress cannot constitutionally forbid all individual and group expenditures without stating a finding that expenditures create the same dangers of undue influence or the appearance of undue influence as contributions. Through these independent expenditures, PACS, and individuals can evade the intent of limits on direct contributions. They can and do spend substantial sums—far in excess of statutory contribution limits—supporting or attacking candidates.

Independent spenders are unaccountable—they do not have to assume responsibility at election time, nor do they face the political impact of any misrepresentation they may make. As Terry Dolan of the National Conservative Political Action Committee (NCPAC) and a leader in the independent spending movement has said, "A group like ours could lie through its teeth and the candidate it helps stays clean."

The persistent use of independent spending in politics alters the political process for the worse. Independent spending can seriously distort the competition between candidates. Candidates are faced with spending not only by their opponents but also by independent groups. As Senator Ernest Hollings (D-SC) has noted, "We all have seen how PAC's can seriously damage the balance in a campaign through the expenditure of enormous amounts of money. In effect, a candidate budgets to fight one well-financed opponent but then ends up fighting many."

S. 1806 would amend the federal communication statutes to provide free, equal response time to a federal candidate to respond to a broadcast independent expenditure advertisement. Under the response time proposal, radio and television stations would be required to provide free and equal time to candidates for federal office in cases where a broadcaster sells time to any person to broadcast material which either endorses or opposes a candidate. (The provision, of course, does not apply to ads broadcast by federal candidates.) If the broadcast advertisement opposes a candidate, that candidate would be entitled at no cost to an equal amount of broadcast time. If the broadcast advertisement endorses a candidate, other legally qualified candidates for the same office would be entitled at no cost to an equal amount of broadcast time. The response time concept builds upon existing responsibilities placed on broadcasters—such as the personal attack rule—and is a constitutional extension of existing communication standards which have been upheld by the courts.

Response time would help to protect the integrity of the present system of contribution limits by assuring that a candidate could respond without major expense to an independent expenditure campaign. Response time would enable candidates to refute misrepresentations made by independent spenders. A response time proposal would not end independent expenditures, but it would restore some measure of accountability to independent spending activities.

### THE BOREN-GOLDWATER BILL—CONCLUSION

By placing an aggregate limit on total PAC contributions, by closing the bundling loophole, and by providing response time to candidates who are the subject of independent broadcast campaigns, the Boren-Goldwater legislation would take a major step forward in remedying some of the most serious problems which confront the current congressional campaign finance system. The Boren-Goldwater bill has garnered significant bipartisan support in the Senate, and a companion measure (H.R. 3799), introduced by Representatives Mike Synar (D-OK) and Jim Leach (R-IA), is gathering support in the House. (A similar PAC limitation bill, the Obey-Railsback legislation, passed the House in 1979.) More than 150 newspapers all across the country have editorialized in support of this legislation in recent months. (We request that copies of these editorials be included in the formal record of this hearing.) While there are other important changes which need to be made in the current congressional campaign finance area, dealing with the PAC issue should go forward now. It should not be deferred until the day when a more comprehensive approach can be enacted into law. Enacting an aggregate PAC limit is a major step on the path towards comprehensive campaign finance reform. We therefore strongly urge the Committee to support S. 1806.

### PUBLIC FINANCING AND SPENDING LIMITS FOR CONGRESSIONAL CAMPAIGNS

There is broad-based support for an aggregate PAC limit in both the Congress and the country as a whole. Because of this growing consensus, Common Cause believes that the focus of action in Congress this year should be passage of S. 1806, the Boren-Goldwater bill. However, there are a number of other pressing issues on the campaign finance reform agenda which require congressional attention in the longer term. The most important is the need to replace the current congressional campaign finance structure with a new system of voluntary public financing, tied to overall spending limits and limits on the use of personal wealth. The presidential public financing system stands as a model for reform of congressional campaigns.

It has been twelve years since the Congress, in the wake of Watergate, enacted the Federal Election Campaign Act Amendments of 1974. The crowning achievement of the 1974 amendments was the establishment of a system of public financing for presidential elections.

In the three national elections during which this new system has been in place—1976, 1980, and 1984—public financing for presidential elections has accomplished its fundamental purpose of preventing the President of the United States from being dependent on or obligated to campaign contributors. Thirty-four of the 35 major party candidates since the law was passed have chosen to participate in this voluntary system. Presidential public financing has checked the increase in presidential campaign expenditures. Presidential contenders no longer must "tin-cup it" around the country in search of campaign funds. In contrast to the presidential contest of 1972, candidates are no longer dependent on a relatively few "fat cat" contributors—the funding base for campaigns is broad. PAC contributions play a minor role in presidential campaigns. PACs gave less than $1.5 million to 1984 presidential candidates, or less than two percent of total funds raised.

While significant adjustments are needed in the presidential public financing system to deal with new problems that have arisen, such as "soft money" and independent expenditures, these changes are required to protect the integrity of an existing system that has met its basic goals. As the Commission on National Elections, headed by Melvin Laird and Robert Strauss, recently concluded, "Public financing of presidential elections has clearly proved its worth in opening up the process, reducing undue influence of individuals and groups, and virtually ending corruption on presidential election finance. This major reform of the 1970's should be continued."

1. *Public financing for congressional campaigns.*—Essential to the presidential public financing system are the federal funds made available to presidential candidates. Congressional campaign finance reform legislation similarly needs to provide alternative sources of campaign funds to candidates. This could be done in the form of public funds to match small contributions from individuals (as is done in the presidential nominating process), or grants to candidates (as is done in the presidential general election), or a 100 percent tax credit for small contributions to candidates, or some combination of these systems. The creation of a broad-based alternative financing system will once again make elective office a realistic ambition for individuals today who are shut out if they lack independent wealth and if thay are unable or unwilling to go to PACs with their hands out, incurring obligations to the contributors. These candidates and their voices are being lost to the political process. Anyone familiar with today's political scene knows individuals who have withdrawn from Congress rather than submit themselves to this demeaning process.

2. *Limits on overall campaign spending and on the expenditure of personal funds by a candidate.*—Limits on overall spending and the use of personal funds are key features of the presidential public financing system and are needed for congressional campaigns as well. The Supreme Court in its 1976 *Buckley* decision upheld the constitutionality of such limits as part of a system providing public financing for presidential candidates but struck down the spending limits enacted for congressional races because they were not tied to any public campaign finance system. It is clear from the *Buckley* decision that limits for congressional races along with limits on the use of personal funds can be enacted constitutionally as part of a public finance campaign system.

In crafting reform legislation, it is important to ensure that spending limits are set at levels high enough to allow challengers to run competitive campaigns. Since any campaign financing system that includes spending limits must be voluntary under the *Buckley* decision, candidates who felt unable to wage effective congressional campaigns within the spending limits would be free to run their races without public financing.

Those who claim that public financing with spending limits favors the re-election of incumbents should not lose sight of the fact that in the first two presidential elections conducted under the presidential public financing system (1976 and 1980) incumbents were defeated, for the first time since 1932.

## OTHER CAMPAIGN FINANCE ISSUES

1. *"Soft Money."*—In federal elections the amounts individuals and PACs may contribute are limited, direct contributions from corporations and unions are completely barred, and all contributions in excess of $200 are subject to public disclosure requirements. In many states, however, parallel regulations do not exist. In the 1980s, so-called "soft" money—contributions from sources (corporations or unions) which are not permitted to make any direct contributions in federal elections or contributions from individuals or groups in amounts above the federal limits—has

increasingly been funneled to state party organizations. While this money is purportedly for use in party-building activities at the state and local level, there is increasing evidence that these funds are in fact being spent "in connection with" federal candidates, particularly presidential candidates, in violation of federal law.

Soft money practices constitute the most serious problem facing the nation's presidential campaign finance system today. Soft money directly undermines the integrity of the contribution limits and prohibitions of the federal law, including the limits on contributions by political parties, the expenditure limits in the presidential public financing system, and disclosure requirements of the federal election law.

In 1984, Common Cause proposed to the FEC that new regulations be adopted to control the use of the soft money subterfuge. Under these regulations, national-level political party committees, including party congressional campaign committees and federal officials, would be prohibited from establishing "soft money" accounts or from otherwise channeling to state parties for use in federal campaigns contributions that would be illegal under federal law.

In our view, soft money practices are in direct violation of existing federal statutes. We believe that the FEC has both the authority and the institutional responsibility to deal with this threat. The problem is clearly within the power of the Commission to resolve and to do so in time for the 1988 presidential elections. Regrettably, the FEC has thus far failed to act. By ignoring the problem, it is setting the stage for the undermining of our entire system of campaign finance laws.

Common Cause has proposed one approach for the Commission's consideration in order to stop this undermining of critical provisions of the federal campaign finance laws. We have spelled out our approach in detail in both formal submissions to the Commission on November 5, 1984 and February 4, 1985 and in testimony before the Commission on January 29, 1986. (We request that a copy of Common Cause's January 29, 1986 testimony before the FEC be included in the formal record of this hearing.) If there are better methods to accomplish the goal of preventing soft money from being contributed and spent in ways that undermine and violate existing laws, we are all for it. The particular way in which this abuse is brought to a stop is not important. That it is stopped and stopped soon is essential.

The integrity of our campaign finance laws is under direct attack. Soft money practices are a way of injecting large sums of otherwise illegal campaign funds into federal elections. Common Cause urges the Committee to add its voice to those pressing the Commission to act.

2. *Delegate Committee Spending.*—While presidential candidates who receive federal matching funds do so in return for a commitment to limit their overall and state-by-state spending, individuals who are seeking selection as delegates to a party's nominating convention are presently not subject to these limitations. Expenditures by these delegate committees create the capacity to evade these spending limits, particulary if the expenditures are made at the direction of, with the encouragement of, or in conjunction with a candidate's campaign.

Similarly, delegate committees create the capacity for individuals and political action committees to evade the $1,000 and $5,000 limits to a presidential candidate, respectively, by making multiple contributions to numerous delegate committees—all of which are directly intended to benefit that candidate's campaign. Such contributions serve to undermine the effectiveness of the existing contribution limits.

As early as 1977, it was clear that the failure of the Federal Election Campaign Act to address the issue of presidential delegate campaign activities created a possible loophole in the law. In that year, in testimony before the Senate Rules Committee, Common Cause and other witnesses urged Congress to address the problem of delegate activities. Legislative action was necessary to preserve two of the most important components of the presidential campaign financing system—the contribution and expenditure limits.

The 1984 controversy surrounding the use of delegate committees by the campaign of former Vice President Walter Mondale underscores the need for a legislative clarification of the role of these committees in presidential campaigns. Federal election law needs to be clarified to apply the limitations on contributions and expenditures to convention delegates.

3. *Public Financing Levels under the Presidential Primary Finance System.*—In recent years, competitive presidential primary candidates have emerged from the previous election with significant campaign debts, despite the availability of public financing for primary elections. This experience raises important questions regarding the adequacy of current levels of public financing made available in the presidential primary process. In our view, any remedy to this problem should focus on the use of additional public funding, such as the availability of additional matching funds rather than on substantial increases in the amounts that individuals and

groups can give to a presidential candidate. Common Cause urges the Committee to take a hard look at ways of injecting additional public funds into the presidential primary system.

4. *Candidate and Officeholder PACs.*—A growing number of presidential candidates and Members of Congress are establishing their own PACs. These PACs, like others, may make campaign contributions; in many cases, particularly in the case of presidential hopefuls, these PACs are also used to finance a candidate's political travel and related expenses—expenditures which at this point do not count against the spending ceilings of the presidential public financing system. These PACs also allow larger individual and PACs contributions to be made to the candidate or officeholder involved than could be made to their candidate campaign committee. They also can place officeholders and office-seekers in the position of using PAC money to curry favor.

Vice President George Bush's political action committee, called the Fund for America's Future ("the Fund"), is a case in point. The Fund recently asked the Federal Election Commission whether its expenditures for activities in Michigan, including recruitment and financial assistance to candidates for precinct delegates, must be treated as presidential campaigning.

The Commission, on March 13, 1986, overturned its general counsel's recommendation and voted 4-2 that the Fund's precinct delegate activities in Michigan are not presidential campaigning and therefore do not require allocation of expenses to any candidate for federal office and do not trigger any such candidacy.

The FEC's decision ignores the seriousness of creating a new loophole in the law which in effect fosters the use of multi-candidate PACs instead of formal presidential campaign committees to finance activities. The Fund's Michigan precinct delegate activity, for example, is not subject to a PAC limit because of the FEC's decision. The Commission's ruling not only does a serious disservice to the campaign finance laws but also is blatantly unfair to other potential Republican candidates for the 1988 presidential nomination.

Legislation should be enacted to prohibit the creation, control or maintenance of PACs by the President, Vice President, and Members of Congress and by prospective candidates for President, Vice President, or Congress.

5. *Presidential Candidate Foundations.*—An increasing number of public figures, particularly prospective presidential candidates, have set up tax-exempt foundations. Unlike campaign committees, these foundations may accept unlimited amounts of money, including contributions from corporations and unions, and they are not required to report the source of their funds. Donations to these foundations furthermore are fully tax-deductible.

These foundations, established to do research on issues and to undertake other educational activities, in theory are not linked to any individual. In practice, however, they can pay and have paid for travel by presidential hopefuls and have provided information which forms the basis of campaign position papers—activities which appear to help promote the public officials who created them.

At a minimum, tax-exempt foundations which are controlled by or maintained for a political candidate should be required to disclose the source and amount of contributions received, and the purpose and amount of expenditures made.

6. *"Grandfather Clause."*—In 1979, Congress amended federal law to prohibit candidates from converting surplus campaign funds for personal use. Under a "grandfather" clause included in that amendment, however, any Member of Congress who was in office on January 8, 1980 is permitted to keep his or her surplus campaign contributions for personal use after leaving Congress. Members who are "grandfathered" under this provision may thus take campaign money upon retirement. These surplus campaign funds, in some cases, now range to amounts as high as $600,000. While House and Senate rules prohibit conversion of these funds for personal use while Members remain in office, several Members who have retired have in fact converted surplus funds for personal use. Congress, which already has recognized the problems inherent in allowing retiring Members to convert contributions into personal funds by banning this activity for many Members, should complete the task started in 1979 and remove the grandfather clause which allows some Members to escape coverage of this provision.

7. *FEC Budget Cuts.*—A critically important provision of the 1974 FECA amendments was the creation of an independent agency, the Federal Election Commission, to oversee the enforcement of campaign finance laws and to provide a central clearinghouse of information on campaign contributions and expenditures. The FEC's recent decision to cut back dramatically on its campaign finance disclosure activities will be extraordinarily damaging to public access to campaign finance information. We believe it is essential that the Commission's decision be reversed.

The FEC action to reduce disclosure activities was taken in the course of implementing Gramm-Rudman budget cuts. In deciding to make major reductions in disclosure, the cut was described in an FEC staff report as a "radical action." According to the FEC, the disclosure cutbacks will result in "a reduction in timeliness, since data entry time probably will double; accuracy of detailed information may be reduced because less expensive methods of data entry will be used; and availability of detailed information will be reduced."

The FEC reductions will result in removal from the on-line data base of all information from election cycles prior to 1984 and will substantially impede timely access to 1986 campaign finance information. The FEC budget cuts will also eliminate computerization of contributions by individuals.

Timely and effective campaign finance disclosure is central to the Federal Election Campaign Act and central to the responsibilities of the Commission in overseeing and implementing the law.

We recognize that Congress has been less than generous over the years in providing adequate funding for the Commission to carry out its responsibilities. This in no way, however, can excuse or justify the misguided decision the Commission has made.

In defending its decision, the FEC has argued that computerized disclosure is not a mandated activity and is therefore an appropriate area for budgetary reductions. Common Cause emphatically rejects this argument. Disclosure is the last place the Commission should be making budget reductions. Effective campaign finance disclosure, particularly in an election year, should be at the top of the Commission's priority list. It is essential to the proper functioning of the campaign finance laws for the funds cut by the Commission from the disclosure program to be restored. We strongly urge the Rules Committee to address this serious problem and to take whatever steps may be appropriate to ensure that the campaign finance disclosure capabilities of the FEC are expeditiously and fully restored by the Commission. We have already previously submitted to Congress a series of recommendations on other steps that need to be taken to improve the Commission's performance and strengthen its oversight role.

8. *Role of Political Parties in Elections.*—In recent years, there has been considerable debate regarding the role of political parties in campaign financing. Legislation introduced by Senator John Heinz (R-PA), pending before this committee, S. 1891, would substantially increase the ability of parties to finance congressional campaigns. Before commenting on the specifics of the Heinz bill, let me make clear that Common Cause believes that some appropriate increase in party contribution limits could be considered as part of a package of fundamental reforms in the current campaign finance system, including overall spending limits, limits on the amount of personal wealth which can be used in an election campaign, and limits on the total amount of contributions which candidates may accept from all PACs.

Under current law, senatorial campaign committees and national party committees may give $17,500 to Senate candidates; party committees are able to make coordinated expenditures on behalf of congressional candidates (expenditures which may total hundreds of thousands of dollars in large states); state and local party committees may spend an unlimited amount on materials used in connection with volunteer activities; and national party committees may make unlimited expenditures for so-called "generic" advertising designed to stress the party's themes in a campaign.

It is simply not true, as some have suggested, that parties play only a minor role in the financing of congressional campaigns. In the 1983-1984 election cycle, House and Senate party campaign committees spent a total of $321 million. According to figures compiled by the FEC, parties contributed $6.6 million to congressional candidates in 1983-84 and made coordinated expenditures in excess of $19.2 million.

While some increases in party contribution limits may be appropriate in the context of comprehensive campaign finance reforms, unlimited party contributions, such as those proposed in S. 1891, pose significant problems. The ability of congressional party leaders, through the party committees which they control, to given unlimited amounts to a Member or to a Member's opponent could bring about the kind of party dominance and financial obligation that is simply not appropriate in our political system. Unlimited contributions from political parties are also bound to increase the danger that the party would be used as an improper conduit for large individual or group contributions to a particular candidate which could not be legally made if given directly to the candidate.

The Heinz bill would open up important new loopholes in the federal campaign finance laws, while at the same time failing to address the single biggest problem with the current congressional campaign finance system—the growing and dangerous influence of PACs. By opening the door for unlimited contributions from corporations and labor unions to political parties for certain purposes, the Heinz bill would severely undermine the flat ban on corporate involvement in federal campaigns which had existed since 1907 and the flat ban on labor union funds which has existed since 1947. By eliminating all limits on party "coordinated expenditures," the Heinz bill would increase the potential for parties to be used as conduits for large contributions which cannot otherwise be given directly to a candidate. Taken together, these two provisions create a new loophole to allow corporate and labor union funds to be channeled to the benefit of candidates.

In addition, the Heinz bill would have a chilling effect on the public's access to FEC records by requiring persons seeking access to such records to sign affidavits and by requiring that the PAC whose records are scrutinized be notified within 48 hours. The Heinz bill would also severely hinder the FEC's ability to enforce campaign finance laws by eliminating most civil fines, the principal enforcement tool currently employed by the FEC.

9. *100 Percent Tax Credit for Political Contributions.*—We would also like to address briefly another campaign finance issue which is not technically under the jurisdiction of this Committee but which has been the subject of considerable discussion in the Congress in recent months—the proposal for a 100 percent tax credit for political contributions.

Current law provides a 50 percent tax credit for political contributions made to candidates for federal, state, or local elective office, to political parties, and to political action committees. The tax reform bill reported by the House Ways and Means Committee last fall proposed to repeal the 50 percent tax credit. When the measure was debated on the floor of the House, however, an amendment was successfully offered to replace this 50 percent tax credit with a new 100 percent tax credit for in-state political contributions to congressional candidates. The amendment was adopted, after a short debate of less than 30 minutes, by a vote of 230 to 196.

Common Cause is strongly opposed to any 100 percent tax credit for campaign contributions which is not part of a comprehensive package of campaign reforms. We believe that standing by itself and in the form passed by the House, the 100 percent tax credit for political contributions is basically flawed and should not be enacted. It will not stop the damaging influence of PACs in Congress and could in fact make the problem much worse.

The 100 percent tax credit will not reverse or contain the growing influence of PACs on Congress, which is the single biggest problem in the current congressional finance system. There is no realistic reason to believe that simply increasing the tax credit for individual contributions will decrease PAC money or influence in congressional campaigns. PACs will still have every incentive to give; candidates will continue to have every incentive to accept. The ten-year track record of exponential growth in PAC giving and PAC influence will continue, with PAC funds continuing to be focused on incumbent Members of Congress.

A 100 percent tax credit without effective bundling restrictions in fact will serve to exacerbate the influence that PACs exert today and will help to undermine seriously current contribution limits for PACs.

A 100 percent tax credit without effective restrictions to deal with bundling will become a potent tool for increasing the influence of PACs. PACs are best situated to organize "no cost" contributions from their already known givers. If they are free to help raise and channel these funds, their ability to influence Congress will escalate.

The House-passed tax credit also gives an unfair advantage to incumbents. The major edge incumbents already have today in raising small contributions will be multiplied by "no cost" contributions without other campaign finance reforms to accompany it. A 100% tax credit by itself and available annually provides publicly subsidized contributions for incumbents in nonelection years when challengers have not even announced.

In the context of a comprehensive package of campaign finance reforms, the 100% tax credit could play a valuable role in providing incentives for small contributions without benefiting incumbents at the expense of challengers, or serving as a vehicle for PACs to maximize their influence. But standing by itself as passed by the House, the 100% tax credit is a seriously flawed proposal which should not be allowed to become law. (We request that a copy of Common Cause's recent testimony before the Finance Committee on the 100% tax credit for political contributions be included in the formal record of this hearing.)

## CONCLUSION

In the spring of 1973, Common Cause Chairman John Gardner told the Senate Commerce Committee that "there is nothing in our political system today that creates more mischief, more corruption, and more alienation and distrust on the part of the public than does our system of financing elections." While there have been historic improvements in the presidential campaign financing system, that observation remains true today with regard to the congressional campaign financing system.

A consensus has been reached in this country that PACs are inimical to our system of representative government. The question now remaining is whether that public consensus can be translated into congressional action this year to pass S. 1806, the Boren-Goldwater PAC limitation bill, into law.

In the longer term, Congress must also take action to transform fundamentally its own campaign financing system and to make other adjustments needed to preserve the integrity of presidential public financing, campaign reporting requirements, and limitations on contributions by individuals and PACs.

No solution which may be adopted will be final and perfect. We will always need to re-evaluate and adjust any campaign finance system. The presidential public financing system demonstrates the need for periodic adjustments. But more importantly, the experience of presidential public financing shows us that fundamental improvement in our campaign finance laws is attainable.

We can and must have a better system for financing congressional campaigns. Representative government is at stake.

Mr. WERTHEIMER. We appreciate this opportunity to testify. I want to thank Chairman Mathias for the hearings he has been holding, for his longstanding concern over the campaign finance reform issue, and for the legislation that he and Senator Simon have introduced.

The Mathias-Simon bill is similar to legislation we have long supported. We worked for similar legislation in 1974 when it passed the United States Senate, when Senator Mathias was one of the bill's leading proponents.

We are here to urge that the Senate act this year on the Boren-Goldwater bill. We believe action is essential.

The same issue of whether or not an aggregate PAC limit would or would not take the steam out of an effort for broader reforms, which we support, arose in 1979 and 1980, when the House of Representatives passed an amendment very similar to the Boren-Goldwater bill that would have provided an aggregate limit on what a candidate can accept from PAC's.

The House passed that bill; the Senate did not act on it. If it had been enacted then, the amount of PAC money in the political process today would be far, far less than it is.

In the years since then, we have seen a very large growth, in the role of PAC's and that growth will continue unless Congress acts now to curb it. PAC's have been one of the leading forces against changing this system, and the greater their role in the political process, the more power they will try to bring to bear to prevent the process from being changed.

So our view on the issue of why it's essential to act this year on the Boren-Goldwater amendment is twofold. We believe it's a very major step in the campaign finance reform field, and we believe that an aggregate limit on PAC contributions is absolutely needed today. A hundred and fifty House Members in the last election got more than 50 percent of their money from PAC's.

Senator WARNER. Could you give us comparable figures for the union contributions?

Mr. **Wertheimer**. I'm including union contributions.

Senator **Warner**. In the general—PAC's.

Mr. **Wertheimer**. Yes, I am.

Senator **Warner**. And has there been a commensurate growth in union funding without a PAC?

Mr. **Wertheimer**. There has been a growth in union PAC giving, not as large as other areas but there has been a significant growth. PAC growth has been across the board: Labor unions, corporations, and trade associations.

The net impact is that PAC's are playing, as a group, a far greater role in the funding of elected officials today than they were 10 years ago.

Senator **Warner**. Because, as you well know, the unions were the pioneers in this type of financing. And then along came the PAC's, presumably as a counterbalancing effect. And now you are saying that both entities are growing at about the same rate.

Mr. **Wertheimer**. No, I think certain groups may be growing at a greater rate. We think it's a mistake to look at this from the standpoint of an equilibrium between business and labor, however, because that immediately takes you into the world of particular interests. There are an awful lot of people in the United States whose positions on public policy are not represented by what a union may be lobbying for in the United States Congress or what a corporation may be lobbying for in the United States Congress.

The PAC's in this political process are not a representation of the citizenry.

We do believe it's essential to act. Something very important has happened in the last year. There has been a breakthrough in the United States Senate in terms of legislation, the Boren-Goldwater bill, whose sponsorship crosses ideological and party boundaries. We are submitting for the record a package of 150 editorials from newspapers in almost every State in the country that are calling for passage of the Boren-Goldwater amendment. There is the capacity to act—and that is why we feel the Congress should move forward this year.

Senator **Warner**. Before you leave the phrase that PAC's are not representative of the citizenry, for those who might be viewing or listening to this program—or this hearing, through their programming. [Laughter.]

Mr. **Wertheimer**. Both, Senator, as it turns out.

Senator **Warner**. Both. Indeed, PAC's are basically voluntary organizations of persons who are working for a company who voluntarily give their funds to the PAC organization, and that PAC organization then distributes those funds, presumably in accordance with the will of those individuals—not perhaps each individual, but the majority; otherwise the funds would dry up, the employees would become dissatisfied.

So I think maybe you might wish to just moderate your thought that PAC's are not representative of the citizens.

Mr. **Wertheimer**. No, I don't want to moderate that thought, Senator.

Senator **Warner**. Well, I'll at least give you an opportunity to do it.

Mr. **Wertheimer.** I appreciate that. When you add up the PAC's of this country, they do not represent the 200 million citizens of this country.

Senator **Warner.** I didn't suggest that, but their constituency—they are representative of their constituents who voluntarily contribute funds into the PAC.

Mr. **Wertheimer.** What happens in this process is that individuals contribute to a PAC. Decisions about what that PAC is going to do in the campaign process are made based very heavily on the legislative interests of the group that controls the PAC, and what happens is that those contributions are transformed into an arm of an organized lobbying campaign. Therefore you get to the point where that money is being used as part of trying to lobby and influence the Congress.

So if you start off with the notion of a voluntary citizen contribution being a healthy part of the political process, you wind up with a process that in its application is very unhealthy. It is the use of money to influence decisions and results, and often at the expense of the general public. Most people in this country do not belong to PAC's; most people in this country do not make contributions to a particular PAC. Yet those PAC's are exercising tremendous influence in this country. That is what I mean when I say that the PAC's of this country do not equate to or represent the citizenry of this country, Senator.

Senator **Warner.** I don't believe you have finished your presentation.

Mr. **Wertheimer.** I'll just finish up at this point. As I mentioned, we have long supported public financing of congressional elections—that is our goal. We think a system for Congress similar to the presidential system would make a dramatic improvement in the way our elections are financed, and in the public's ability to respect the decisions of the United States Congress.

We believe the opportunity exists now to act on a piece of legislation that has broad support, and that can be a major step forward, even though it doesn't represent our ultimate goal—and that is the Boren-Goldwater bill. In addition to providing an aggregate limit on PAC contributions to a given candidate, it also deals with one of the growing problems in the world of PAC's—and that is the practice of bundling. Bundling is a practice whereby PAC's evade the PAC contribution limits that exist in the law by soliciting checks written out individually to candidates by PAC members, with the PAC serving as a conduit for turning these contributions over to the candidate. One PAC last year made a contribution of $1,000 from the PAC to a Member of the Congress and at the same time turned over $215,000 in bundled contributions. That makes a mockery of the $5,000 PAC contribution limit, and we feel it's very important that this loophole be closed.

Some people have argued that disclosure is enough for this process. And there are disclosure laws on the books. There is a very good campaign finance disclosure law that PAC's file under. There is also a lobby disclosure law, although it is not adequate, and we have worked very hard to improve that law over the years. Congress has not seen fit to act. Common Cause files under that law, we make disclosures of our expenditures under that law.

When you get to the campaign finance system, disclosure is not enough. Disclosure is what has told us that PAC contributions have grown from $12.5 million in 1974 to over $100 million in 1984. It hasn't solved the problem; it has told us we have a very serious problem and we must move to the next steps.

Thank you very much.

The CHAIRMAN. Thank you very much, Mr. Wertheimer. So that I don't neglect to do this at a later time, or we get interrupted, let me say this, that because your testimony is so comprehensive—not just on legislation pending, but on the general subject—we may need to get your advice and counsel on subjects that we won't touch in oral questions today. So I would hope that you would be willing to respond to some written questions which we will make part of the record.

Mr. Cox. Certainly.

The CHAIRMAN. Now, in your statement you affirm—and I am glad to see that you affirm—that public financing is still the long-term goal of Common Cause, and I am glad to have that continued support.

But you further say that you think that now is the time to enact the overall caps on the amount of PAC contributions.

Let me put to you the same question I put to Senator Goldwater: If you adopt the Boren resolution, isn't that going to break the momentum and really postpone coming to grips with the central issue?

Mr. WERTHEIMER. I think the opposite is true Senator. I don't think it will break the momentum. What it will do is help us stop the PAC system from getting so out of control that PAC's prevent us from getting any changes made.

As I mentioned earlier, we faced a similar question in the late seventies. If an aggregate limit had been enacted then, PAC's would play far less of an overall role in this process than they do now. They are ultimately a major force for stopping precisely the kind of long-term changes you are talking about.

The CHAIRMAN. Well, now, in that connection, take a look at page 5 of your statement. On that page you show the volume of contributions by PAC's from a variety of industries to members of the Senate Finance Committee.

Now, what would be the change in that picture if the Boren bill became law? Wouldn't it be possible, after the Boren bill was law, for the same industries to make pretty much the same effective kind of contributions to the same incumbent candidates?

Mr. WERTHEIMER. It would depend on the size of the limit in the State. In the longer term, PAC money would become a smaller and smaller percentage of total contributions. Second, within the overall limit, the capacity would exist to dilute a particular interest group with other groups. When you put a lid on the process, you stop the capacity for unlimited growth in particular interest areas.

It does mean that there would still be some room, but there would be far less room. The best example of it is to look at the numbers. If the Boren amendment had been in effect in the 1984 Senate elections, the total amount of PAC money which could have been given would have been $14 million, versus the $28 million that was actually given. You would have cut out half of the PAC money that was given in the 1984 Senate elections.

That's not a total solution, but what it does is stop the growth that has occurred and is going to continue to occur unless we do something. And the more influence PAC's get, the harder it becomes to change this system.

Mr. Cox. May I call attention to just one further fact that seems to me to be significant. Putting a cap on the aggregate PAC contributions that any candidate can receive will affect some people more than others. Just how that balances out in the overall amount of PAC money is hard to figure. But what it would do is check the number of individuals in Congress who are getting presently 50 percent or more of their money from PAC contributions, and they are most often people in key positions. It would prevent the growth of that kind of dependence of very important Congressmen on PAC contributions.

The CHAIRMAN. Let me press you on this, because I think it's important in considering whether the effort that would go into enactment of this bill would justify the results that we can get out of it.

Now, as I understand it from information that this committee has received from the Federal Election Commission, only 3,000 out of the 4,000 PAC's actually made contributions to House and Senate candidates in 1984. Of those 3,000 who made contributions only 369 PAC's made at least one $5,000 contribution to a Senate candidate. Of the total volume of contributions to Senate candidates, which was a figure of about $30 million, nearly $5 million was contributed in amounts, in chunks, of $10,000 each. And these maximum contributions to Senate candidates for the 2-year election period were made by 117 PAC's.

So here out of this total array of 4,000 PAC's, you have only 117 that make contributions in maximum amounts to Senate candidates involved in both a primary and a general election.

So doesn't this suggest that not very many of the PAC's really take advantage of the higher limits, and that therefore the Boren reduction of PAC limits, under the present method of operating, really wouldn't make all that much difference?

Mr. WERTHEIMER. I don't think so, Senator. It is true that there are some PAC's that give substantially more than others. We did not mention before that the Boren limit both provides an aggregate limit on what a candidate may accept from all PAC's combined and cuts the amount an individual PAC may, from $5,000 to $3,000. So it also reduces the amount any individual PAC can give. To the extent that a number of PAC's are giving $10,000, that will be cut to $6,000.

But perhaps the most important thing is not to look at the fact that only a relatively few give the maximum amount; we must look at how many are operating in a particular area. For example, 274 labor PAC's gave $26 million in the last election cycle; 295 banking PAC's gave $4 million; 111 oil and gas PAC's gave $4.7 million.

What you have is a number of PAC's operating in a particular interest area, and even though each can only give $5,000, if a whole group of PAC's representing the insurance industry on a particular tax matter have given such significant sums of money, it is that aggregate impact that comes to bear from a pressure standpoint.

I go back to another point. During the process——

The CHAIRMAN. Well, how would that be affected by the Boren bill?

Mr. WERTHEIMER. It would be affected by putting an aggregate cap on the amount any Senate candidate could accept, starting at the limit of $175,000. A total of $175,000 from all PAC's would be a substantial reduction, a major reduction, in the number of States.

Absent this kind of aggregate PAC limit, what we have seen over the last 10 years is PAC contributions grow from $12.5 million to over $100 million. This would stop and contain that kind of growth.

The CHAIRMAN. It might be useful at this point, if there are no objections, to put into the record the study of contributions by PAC's to Senate candidates, which is a study based on figures provided by the Federal Election Commission. Since I've interrupted the proceedings to do that, I might also put in the record two reports by the Congressional Research Service made with particular reference to the Boren amendment, one by Thomas Durbin on legal considerations with respect to the Boren amendment and the other by Joseph Cantor on policy and practical considerations of the Boren amendment.

Mr. WERTHEIMER. With respect to that point, Senator, we also have a legal memorandum that I would like to submit later for the record.

The CHAIRMAN. Senator Warner, do you have any questions at this time?

Senator WARNER. Go right ahead.

The CHAIRMAN. I want to turn to your comments on the Federal Election Commission's cutback in computerized disclosure of campaign finance information.

Senator Ford, the ranking minority member of this committee, joined with me in writing to the Commission urging that they reconsider the decision that they made as their response to Gramm-Rudman cuts.

The Commission does not believe that they have any other choice.

Senator Ford and I expressed the concern that it appears to us that without the data entry program, it is not only going to curtail information about campaign finance, but it's also likely to make enforcement more difficult.

Now, you state that the FEC decisions can't be justified, that the computerized data program that they are reducing is mandated under the statute.

Do you want to expand on that point a little bit?

Mr. WERTHEIMER. Senator, I appreciate what you and Senator Ford have done in terms of raising this issue. I think the FEC's position is ludicrous. They have taken a very literal notion that there is nothing in the campaign finance laws that requires the use of computers for disclosure purposes.

One of the principal roles of the Commission is to implement this law with respect to disclosure. The use of computer data has become absolutely essential if this act is going to be used in a timely manner.

You can find that out by talking to anyone who tries to use this data.

For the Commission to argue that the only place they can find to take $150,000 out of their budget is to gut one of their most central responsibilities is not only ludicrous, but it's shameful. The net result is going to very much undermine the capacity of the public and the media to use these laws. The notion that there is no place in the FEC's budget, there are no staffing positions that can be sacrificed, at the expense of gutting disclosure, is disgraceful, in my opinion, Senator.

The CHAIRMAN. The Commission will be visiting us before too long and we will discuss that matter further with them when they come.

Because of the pressures of time and the likelihood that we will be further interrupted by votes in the Nicaragua debate that is under way in the Senate, I think we had better resort to our written questions—but with this exception: you raised the question of soft money, and I think that is an area that is very little understood in the whole political process, but it heads your list of other campaign finance issues that you feel would possibly undermine the whole presidential financing system.

When you say soft money and when you raise the question that soft money practices are in direct violation of existing Federal statutes, do you mean that if such funds are used to affect Federal elections through supporting State and local parties or candidates, that in your judgment they are violating current law?

Mr. WERTHEIMER. Yes, in the circumstances we have described them, in the circumstances they are being raised, what is happening is that money which cannot be given directly to Federal candidates is being channelled through State and local parties with the express purpose of having these funds influence the Presidential election. And, in our view, it's in violation of the law.

The CHAIRMAN. Do you think current law, then, does not reach contributions to State and local candidates or to local and State political parties?

Mr. WERTHEIMER. I think current law covers this, if the Federal Election Commission had properly interpreted existing law as they originally did in the opinions they first put out. They reversed their opinions, and, in so doing, are, in our view, in conflict with current law.

This is something that we think current law covers. The way the FEC has interpreted it has left a major loophole and a large problem for the future.

The CHAIRMAN. Would you give us a memorandum on that point with the citations of the particular decisions made by the Commission that you feel have contributed to this problem?

Mr. WERTHEIMER. Yes, Senator.

The CHAIRMAN. I suppose we regretfully had better leave it at that for now, but we will be submitting some written questions to you.

I understand that Mr. Billings has some time problems, and so I am going to call him up out of turn at this point—Mr. Leon Billings.

## TESTIMONY OF LEON G. BILLINGS

Mr. BILLINGS. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Billings, because of the time constraints I've just mentioned, we will accept your written statement as if fully read and invite you to summarize it as briefly as you can.

Mr. BILLINGS. What I'm going to do, Mr. Chairman, is skip to the meat of my testimony. My experience of 14 years on the Senate staff suggests that very often summaries take longer than reading the testimony. So I will skip to the seventh page and read from there, if it's all right with you.

The CHAIRMAN. At least you are fully aware of the kind of dilemma in which we now find ourselves.

Mr. BILLINGS. I also appreciate your taking me out of order. My time problem is related to the fact that I have a meeting with my former boss, Senator Muskie, at noon to celebrate his 72d birthday. And so you are doing him a favor by letting me buy him lunch.

The CHAIRMAN. We will cooperate with you if you will convey our congratulations and respects to Senator Muskie.

Mr. BILLINGS. Thank you, Senator Mathias.

Senator, in my testimony I discuss my background on campaign finance issues, which ranges from collecting money to spending money to my own candidacy now for the House of Representatives in Montgomery County, MD. My testimony today derives partially from being former executive director of the Democratic Senatorial Campaign Committee and partially from my many other experiences.

My conclusion is that we cannot begin to deal with the problem of campaign finance without dealing with the problem of overall expenditures. Unless we limit expenditures, all the rest of the proposed reforms simply pale and, perhaps, are unfair.

I do not believe—and I suggest today, Mr. Chairman, that I do not believe that you need to make a statutory or constitutional change to accomplish the objective of limiting campaign expenditures. I believe that the Senate and the House can address this issue clearly and constitutionally through your own rules.

Congress has sole responsibility for its rules, its procedures, and whether or not Members should be censured or expelled. Thus, Congress and Congress alone can sit in judgment of its own integrity. To protect itself, Congress already requires financial disclosure and limitations on outside income. Use of staff, facilities and the frank has been circumscribed. There are limitations on what can and cannot be said in debate, and by act of censure or expulsion there are limits on how Members get to office and what they do in office.

All of these, either generic rule or case-by-case judgment, evolved to protect the integrity of Congress, without which all of the institutions of our republic, and particularly those which are directly responsible to the electorate, would not be credible and could not survive.

For this reason, Congress can and should consider establishing limits on campaign expenditures by change in the rules governing each body.

It seems to me entirely reasonable for the Senate and the House to establish rules for campaign expenditure limits the violation of which could lead to censure or expulsion.

Of course, there would be a constitutional question. Inherent in any expenditure limit, if the standard of *Buckley* v. *Valeo* is to be accepted, is a limit on freedom of speech. And it may well be, as the Court found in that case, that the constitutional right to freedom of speech takes precedence over the general equitable interest in making two candidates spend roughly equivalent amounts. I believe, however, that a rules limitation would present a very different constitutional equation from the statutory spending limit struck down in *Buckley* v. *Valeo.*

*After all, the limitation on speech presented by the* Federal Election Campaign Act was not an egregious form of restriction. To the contrary, spending limits are at most indirect limits on the quantity of speech, and are entirely candidate-neutral; they do not restrict any particular political message or even any identifiable kind of message. Against this indirect, candidate-neutral restriction on campaign speech, I would assert an interest which I believe is greater than the interest presented to the Court in *Buckley* v. *Valeo:* the fundamental interest in the institutional integrity of Congress.

Mr. Chairman, I have spent a great deal of my life working in these buildings. I am frustrated and angry over the decline in the public's faith in the integrity of this great institution, because of suspicion that money is corrupting the process of selection of Members of Congress and thus corrupting the Members themselves.

Therefore, I urge this committee, and your counterpart in the other body, to examine the use of your rules to establish limits on campaign expenditures. Such an action could send a signal to the public this year, now, that Congress is going to police itself by its own rules as it has done on outside income and financial disclosure.

Such a rules change this year would send a clear and unmistakable signal that the Congress is indeed concerned with the influence of money in politics. Moreover, such an action by this body would require no action by the House of Representatives and no action by the President. The House of Representatives would have to act independently. And if one body acted, I have no doubt the other would become extremely interested in following suit.

Such a rule would have two enforcement points. The first would be the court of public opinion. Those who exceeded the spending limits would first have to offer an explanation to the voting public. And voters would have a benchmark against which to measure the level of spending.

Moreover, each body could provide public funds to offset any advantage which might otherwise accrue to the candidate who chose to violate these rules.

Any successful candidate who exceeded the limit would also have to answer to his peers and face whatever censure or discipline deemed appropriate. In one sense, the limits would be voluntary and enforced by public scrutiny. But exceeding the limits would also have a price in terms of prestige in the Congress itself. And an egregious violation could result in expulsion.

I might mention to the chairman that I have a copy of the hearings and report of this committee in 1900 in which they expelled a Member of the U.S. Senate—voted to expel a Member—he resigned before the act—for an egregious violation—bribing the State legislature to become a Member of the Senate. So it's not without precedent.

Even if a violation can only be enforced after the election in the case of a nonincumbent, I believe such a rule would create a shock wave of reform. I think most candidates will welcome it as a chance to get the fundraising albatross off their necks. And those who resent the rule will do so because it limits their personal financial leverage on the political process. To my mind, that result is not unfair at all.

Mr. Chairman, such a rule could be challenged by someone who, for some reason or other, would prefer to denigrate our process or purchase their office. But I suggest that the success of such a challenge is not a forgone conclusion. And, most importantly, the Congress would have demonstrated a commitment to reform, a commitment too many voters suspect is absent from today's Congress.

Finally, Mr. Chairman, this is an initiative that you could take as chairman of this committee before you retire, adding to your already excellent legacy of public service.

Thank you very much.

[The prepared statement of Mr. Billings follows:]

### PREPARED STATEMENT OF LEON G. BILLINGS ON CAMPAIGN FINANCE

Mr. Chairman, thank you for this opportunity to appear before the Senate Committee on Rules and Administration. As a 14-year veteran of the Senate Staff, I appreciate your time and attention and particulary appreciate your willingness to try to wrestle with the question of campaign financing.

Mr. Chairman, I am testifying today as an individual. While I am a Democratic candidate for Congress from Maryland's Eighth Congressional District, the views which I will set forth today derive not so much from my candidacy, but rather from my experience as an assistant to a United States Senator, Executive Director of the Democratic Senatorial Campaign Committee, adviser to political action committees and a contributor to political candidates from Montgomery County Council to President of the United States.

I bring to this Committee an acquired knowledge of campaign finance and fund raising. I was associated with Senator Muskie during his Vice-Presidential race and his run for the Democratic Presidential nomination. At that time there were no limits on personal contributions, PACs were largely irrelevant, reporting was voluntary and public financing didn't exist.

I served as Executive Director of the Democratic Senatorial Campaign Committee under the chairmanship of Senator Wendell Ford of Kentucky in the period of the 1982 election.

I have actively raised money—especially in the past six years—for Democratic candidates for President, Congress and local office. Since my service for the Democratic Senatorial Campaign Committee, I have advised several political action committees and PAC directors on raising and distributing funds.

Since 1981 I have contributed thousands of personal dollars to Democratic candidates at all levels.

And for the past four months I have been actively and aggressively raising money for my own campaign for Congress from individuals and PACs.

In short, I have raised campaign money for myself and others, spent it, provided expert advice and given from my own pocket until it hurt. Mr. Chairman, if experience is the best teacher, when it comes to campaign finance, I am downright learned.

I drew several conclusions from my tenure with the DSCC regarding campaign financing which were the subject of a May, 1983, memorandum to former Senator Edmund S. Muskie, who at the time was a member of a 20th Century Fund study of campaign financing. With your permission, Mr. Chairman, I would like to submit a copy of that memorandum for the record.

I looked at measures for regulating where campaign money comes from, such as measures limiting spending by PACs and tax credits for individual contributors. I examined measures for regulating what campaign money can be used for, such as a prohibition on the sale of political advertising on television.

While all such proposals have merit, each shares a common flaw: each fails to address the core problem of limiting the overall cost of campaigns—total campaign expenditures. Control spending and you control fund raising and costs. Merely tinkering with the manner in which funds are raised or who contributes how much without dealing with the fundamental problem of limiting spending will fall short of real reform and, worse, will be unfair.

It is the nature of campaigns that they tend to cost as much as the candidates have to spend. Money is the raw material of campaigns. The massive campaign war chests have created a seller's market in the necessities of modern campaigns—polling, computers, direct mail, broadcast advertising, voter contact, field organization. New and sometimes breathtakingly expensive campaign techniques have been developed in response to the available supply of cash.

The success of some of these techniques, or at least claims of success, have fed the fundraising fever. It seems no matter how much money one raises, the campaign always needs a little more. How high will the cyclone take us? In the last election cycle, spending for congressional races alone was a $350 million enterprise. That's a 600% increase in the five election cycles since the 1974 campaign law revision. Campaigns are becoming so expensive that being merely rich is no longer enough. Only the super rich can afford to finance a successful race from their own pocket.

Congress tried to cap spending in the early 1970's, but the Supreme Court of the United States held that equity did not justify legislated limits on the amount individuals can spend from their own personal wealth to seek office or that independent committees can spend from individual or collective wealth to influence elections.

So, the fact remains that a very rich individual may enter a race at any time, expend unlimited sums of personal wealth and undermine, if not destroy, the electability of another candidate. And that means every politician—out of pure terror—must make every effort to raise a campaign war chest of frigthening proportions to discourage even the richest of potential opponents. In my view, the time, energy and intellectual commitment that fund raising takes saps the strength of the candidates, reduces the quality of the campaigns, and ultimately diminishes the institution of Congress significantly more than does the corruptive potential of the money itself.

Unless and until the Congress speaks to the issue of personal expenditures and total campaign spending, the remainder of the reforms before you will be of little effect. Moreover, participation in our process by people without great personal wealth or not captive of monied interest will continue to decline.

Too many Americans believe our campaign financing system is a corruptive force. They see PACs as evidence of that corruption, but PACs are only a symptom. The disease is exploding costs.

I believe we are exhausting the public patience by an inability to deal effectively with purchased elections. I understand that the debate over campaign finance reform is ultimately a debate over fairness. Is it fair to limit an individual's ability to spend a personal fortune? Is it fair to ask an interest group to limit its political spending to further its cause? Is it possible to balance the equities among rich candidates and poor, incumbents and non-incumbents, large state and small state candidates, and all the rest?

There will always be disagreement over the answers to these questions. And no system, no matter how well conceived or motivated, will be absolutely fair. But the current system is patently unfair. And worse, campaign financing and the costs of campaigns are challenging the very integrity of our political process. More important, and at issue today, campaign spending and some of the techniques it has spawned has fostered serious public doubts about the integrity of the institution of the Congress of the United States and its members.

For these reasons, if necessary, I would favor a constitutional amendment authorizing the Congress to set limits on overall expenditures by candidates for their respective bodies.

But such an amendment may not be necessary. I believe the Senate and House can address the issue clearly and constitutionally through their own rules.

Congress has sole responsibility for its rules, its procedures and whether or not members should be censured or expelled. Thus, Congress and Congress alone can sit in judgment of its own integrity. To protect itself, Congress already requires financial disclosure and limitations on outside income. Use of staff, facilities and the frank has been circumscribed. There are limitations on what can and cannot be said in debate, and by act of censure or expulsion, there are limits on how members get to office and what they do in office.

All of these, either generic rule or case by case judgment, evolved to protect the integrity of the Congress, without which all of the institutions of our republic, and particularly those which are directly responsible to the electorate, would not be credible and could not survive.

For this reason, Congress can and should consider establishing limits on campaign expenditures by a change in the Rules governing each body.

It seems to me entirely reasonable for the Senate and the House to establish rules for campaign expenditure limits the violation of which could lead to censure or explusion.

Of course, there would be a constitutional question. Inherent in any expenditure limit, if the standard of *Buckley* v. *Valeo* is to be accepted, is a limit on freedom of speech. And it may well be, as the Court found in that case, that the constitutional right to freedom of speech takes precedence over the general equitable interest in making two candidates spend roughly equivalent amounts. I believe, however, that a Rules limitation would present a very different constitutional equation from the statutory spending limit struck down in *Buckley* v. *Valeo.*

After all, the limitation on speech presented by the Federal Election Campaign Act was not an egregious form of restriction. To the contrary, spending limits are at most indirect limits on the quantity of speech, and are entirely candidate-neutral; they do not restrict any particular political message or even any identifiable kind of message. Against this indirect, candidate-neutral restriction on campaign speech, I would assert an interest which I believe is greater than the interest presented to the Court in *Buckley* v. *Valeo*: The fundamental interest in the Institutional integrity of the Congress.

Mr. Chairman, I have spent a great deal of my life working in these buildings. I am frustrated and angry over the decline in the public's faith in the integrity of this great institution, because of suspicion that money is corrupting the process of selection of Members of Congress and thus corrupting the Members themselves.

Therefore, I urge this committee, and your counterpart in the other body, to examine the use of your Rules to establish limits on campaign expenditures. Such an action could send a signal to the public this year—now—that Congress is going to police itself by its own Rules as it has done on outside income and financial disclosure.

Such a Rules change this year would send a clear and unmistakable signal that the Congress is indeed concerned with the influence of money in politics. Moreover, such an action by this body would require no action by the House of Representatives and no action by the President. The House of Representatives would have to act independently. And if one body acted, I have no doubt the other would become extremely interested in following suit.

Such a rule would have two enforcement points. The first would be the court of public opinion. Those who exceeded the spending limits would first have to offer an explanation to the voting public. And voters would have a benchmark against which to measure the level of spending.

Moreover, each body could provide public funds to offset any advantage which might otherwise accrue to the candidate who chose to violate these Rules.

Any successful candidate who exceeded the limit would also have to answer to his peers and face whatever censure or discipline deemed appropriate. In one sense, the limits would be voluntary and enforced by public scrutiny. But exceeding the limits would also have a price in terms of prestige in the Congress itself. And an egregious violation could result in expulsion.

Even if a violation can only be enforced after the election in the case of a non-incumbent, I believe such a rule would create a shockwave of reform. I think most candidates will welcome it as a chance to get the fundraising albatross off their neck. And those who resent the Rule will do so because it limits their personal financial leverage on the political process. To my mind, that result is not unfair at all.

Mr. Chairman, such a Rule could be challenged by someone who, for some reason or other, would prefer to denigrate our process or purchase their office. But I suggest that the success of such a challenge is not a foregone conclusion. And, most importantly, the Congress would have demonstrated a commitment to reform—a commitment too many voters suspect is absent from today's Congress.

Finally, Mr. Chairman, this is an initiative that you could take as chairman of this committee before you retire, adding to your already excellent legacy of public service. Thank you very much.

The CHAIRMAN. Well, thank you very much, Mr. Billings.

First of all, let me say that Senator Ford regrets very much that he is unable to be here; he is caught in a conflict with other duties this morning. But he had some questions that he would like to have your response to, and so I am going to give you his written questions and ask that you respond for the record to his questions.

Mr. BILLINGS. I would be more than happy to, Mr. Chairman.

The CHAIRMAN. Let me just ask you this. Is it your thought that the expenditure limit that you have in mind would apply on the election-cycle basis, that is, for both the primary and the general, because that is part of the difficulty of our problem, getting hold of primary activities as well as the general election activities?

Mr. BILLINGS. My thought is that each candidate would be circumscribed in what they could expend in each election, so there would be a primary expenditure limit and a general expenditure limit.

The CHAIRMAN. What are the kinds of expenditures for which there would be limits?

Mr. BILLINGS. I would say it would be an overall campaign expenditure limit.

The CHAIRMAN. Anything relating to the campaign?

Mr. BILLINGS. Anything related to the campaign.

The CHAIRMAN. That's a wide net you are throwing.

Mr. BILLINGS. It's a wide net, but, you know, I've thought about it in the context of my own campaign and what a campaign for Congress should reasonably cost in a primary and a general. And it's hard to come up with a good number; there is a lot of differences in congressional districts, and so on.

But you are going to have to be absolute eventually anyway. And I don't think that it is unreasonable to suggest a limitation of a couple of hundred thousand dollars in a primary, and three to four hundred thousand dollars in a general for a House race.

If you put the limit at somewhere below—even if it's just modestly below what the average is today—then you stop campaign cost inflation—you begin to get control of this out-of-control beast.

And I think you would have to set it high enough in the Senate so that you recognize some of the limitations in larger States with more expensive media markets, but the fact is that you are setting limits in your public expenditure bill—and I think those limits might be adequate.

The CHAIRMAN. I have some further questions which I will also submit along with Senator Ford's, and we appreciate your being with us here this morning.

Mr. BILLINGS. Thank you very much, Senator.

### QUESTIONS SUBMITTED BY SENATOR FORD TO LEON BILLINGS PERTAINING TO RULES LIMITATION ON CAMPAIGN EXPENDITURES

*Question. 1.* How would a Rule limiting expenditures be enforced?

Answer. Congress has a variety of tools available to enforce its Rules, including censure and explusion. As a practical matter, no sitting member would want the public censure, much less the formal censure associated with exceeding limits on campaign expenditures. With respect to candidates, the discipline would be applied if a candidate were successfully elected. The Rules could provide, for example, that no person who exceeds the limit would be permitted to vote to organize the Senate or to receive a committee assignment and, if the violation were egregious enough, the Senate would have constitutional authority to expel.

*Question. 2.* If a candidate chose to exceed the limits, what could the Congress do to maintain equity?

Answer. As noted above, any candidate would do so in the face of enormous adverse publicity. But assuming the possibility that adverse publicity would be an inadequate assurance to incumbents, the Rule could provide that funds would be made available from the legislative appropriation in offsetting amounts. This would provide the additional burden on the violator of costing the Treasury money to subsidize his or her Rules violation.

*Question. 3.* Are existing reporting Rules adequate?

Answer. FEC reporting requirements would have to be tightened, perhaps to require a filing every 30 days in the 12 months prior to the general election and six months prior to a primary—a reasonably easy requirement with the availability of computer and FEC computer programs.

*Question 4.* How does this proposal square with *Buckley* v. *Valeo*?

Answer. It is not a statutory prohibition on expenditure; it is a Rule of each Congressional body which establishes that excessive expenditures will result in censure and potential expulsion. It would not "exclude" a candidate who violated the rules. While it is arguable that there is an explicit clash between two provisions of the Constitution, Articles 4 and 5, authority of the Congress to regulate itself, and First Amendment rights, it is not premised on equity, on which *Buckley* v. *Valeo* ultimately turned. In that case, the Court said:

"The ancillary interest in equalizing the relative financial resources of candidates competing for elective office, therefore, provides the sole relevant rationale for Section 608(a)'s expenditure ceiling. That interest is clearly not sufficient to justify the provision's infringement of fundamental First Amendment rights."

Rather, it is premised on the absolute authority and responsibility of the Congress to protect its own integrity. In *Powell* v. *McCormack*, Chief Justice Warren stated "Unquestionably, Congress has an interest in preserving its institutional integrity, but in most cases that interest can be sufficiently safeguarded by the exercise of its power to punish its members for disorderly behavior and, in extreme cases, to expel a member with the concurrence of two-thirds."

*Question 5.* How does this proposal deal with the problems of contributions of political action committees?

Answer. It doesn't directly, but as my memo to Senator Muskie indicates, the Congress cannot effectively address the manner in which funds are raised and the role of potential interest groups and contributions until the problem of overall campaign costs is addressed. Moreover, if the House and the Senate individually are restrictive enough on the level of expenditures and the need to raise money is diminished, the influence of campaign contributors will be diminished.

*Question 6.* Doesn't this system significantly advantage incumbents?

Answer. The current system disadvantages nonincumbents and people of modest means. The current system benefits incumbents and the very rich. If the limitations were sufficiently rigorous, the disparity between incumbents and nonincumbents could be reduced and clearly the opportunity of the very wealthy to spend unlimited personal resources would also be reduced.

*Question 7.* How does this proposal deal with the influence of independent committees?

Answer. It doesn't. On the other hand, today many candidates would hope to be targetted by NCPAC-type fringe groups. The independent committee phenomenon, while scurrilous, may have passed and certainly should not be the basis for not setting limits on campaign spending. I should point out that as executive director of the Democratic Senatorial Campaign Committee I fought vigorously to stop so-called "liberal" independent committees from running television commercials in opposition to Senators Hatch, Wallop and Schmitt. I thought their effort would damage the Democratic nominees, be viewed by voters in those states as unwelcome outside interference, and enhance the election prospects of incumbent Republicans. And our effort was successful because we were able to convince TV stations that independent committee advertising could be rejected legally.

The CHAIRMAN. Our next witness will be Mr. John T. Dolan, the national chairman of the National Conservative Political Action Committee.

Good morning, Mr. Dolan, we welcome you back once again to this committee.

To reduce the possibility that you will be interrupted, I suggest that you do the same thing that Mr. Billings did, submit your statement for the record and give us a short summary.

## TESTIMONY OF JOHN T. DOLAN, NATIONAL CHAIRMAN, NATIONAL CONSERVATIVE POLITICAL ACTION COMMITTEE

Mr. DOLAN. I do have something I'd like to say, much of which is not in my statement. I'd like to begin by trying to dispel a notion which most of the speakers have so far presumed is as true as Newton's law of gravity, and that is that not only PAC's spend too much money on politics but virtually everybody else does as well.

MacDonald's probably spends in 1 day's advertising more than we spend in an entire election cycle advertising the people who will run our lives for 2 or 6 years. Americans know more about the Tidy Bowl Man than they know about their Senators.

The CHAIRMAN. There's a difference in the results. MacDonald's spends a lot of money on advertising, and the net result is they get more customers. I've watched how they have changed: they have gone from having sold the umpteen millionth, now they are into the billionth—hamburger.

So they are getting more customers as a result of their advertising expenditures.

The sad fact is that political participation in America seems to go down as the expenditures go up.

Mr. DOLAN. Well, Senator, you are just dead wrong about that. The most expensive——

The CHAIRMAN. You tell me how, because the figures don't reflect that I am wrong.

Mr. DOLAN. The figures support me, they don't support you.

The CHAIRMAN. Show me.

Mr. DOLAN. I will—I'm about to. The figures indeed have shown that there has been a general dropoff in voter participation.

The CHAIRMAN. Ah.

Mr. DOLAN. For how long—for how long, Senator?

The CHAIRMAN. A long time.

Mr. DOLAN. Right, nothing to do with——

The CHAIRMAN. It's gone from about 1896 to the present time on a steady downward.

Mr. DOLAN. That's correct.

The CHAIRMAN. And the additional dollars we pour in haven't reversed that trend.

Mr. DOLAN. Well, no, there indeed has been a falloff.

The CHAIRMAN. I don't think I'm so wrong after all.

Mr. DOLAN. You are not wrong in the sense of the falloff, but attributing it to money—you are wrong about that.

The CHAIRMAN. I'm saying it's happening in spite of the money that is being spent, that's the point I make.

Mr. DOLAN. Well, again I will disagree with you, and if you will let me finish my statement I will be happy to——

The CHAIRMAN. You go right ahead.

Mr. DOLAN. There has indeed been a falloff for probably, as I think you said, 100 years. But in 1984 the most expensive election in the history of the United States—1982, the Helms election was

1984, OK—I apologize, I lose sense of years very quickly, particularly in politics. But the most expensive election in the history of the country—Senator Helms would make a charge and spend hundreds of thousands in television time and newspaper ads and so on and so forth; Governor Hunt would respond by doing exactly the same thing; Senator Helms would rebut, so on and so forth.

And it may interest the people in this room to realize that North Carolina, which is not known for its voter participation, had the single largest growth in per capita registration of any State in that year, that they had the single largest voter turnout increase of any State in the United States of America.

So if you are looking for a way of increasing voter participation, take every single one of these bills, burn them, and get rid of all limitations.

I do want to make some brief comments on a couple of these bills, but I do want to focus more on the Boren bill.

All these bills deal with one thing, and that is power to control events in Washington, DC. The proponents of these bills are supporting them to increase their ability and the ability of their friends and their allies to get what they want out of the U.S. Congress.

I was intrigued by Mr. Wertheimer's statement, which basically assumes that cutting the power of PAC's is a societal good equivalent to wiping out venereal disease. I happen to disagree with that. As a matter of fact, I happen to believe that Common Cause drying up and disappearing is a societal good perhaps more important than wiping out venereal disease, but I am not here seeking special support for a bill that would wipe out Fred Wertheimer's constitutional right to influence the U.S. Congress. He believes that cutting the amount of money that we spend on politics from $28——

The CHAIRMAN. Mr. Wertheimer or anyone else has a constitutional right to influence the Congress; they have a constitutional right to try.

Mr. DOLAN. I should have stated it that way, you are correct. He believes that cutting the amount of money given by PAC's from $28 million to $14 million, again, would be just peachy-keen, not realizing, of course, that if he did that, that's $14 million less information that would go to the American public.

I don't think that's good at all. I think that MacDonald's advertisements about the Big Mac are important for MacDonald's overall corporate strategy, and Senator Helms, $20 million, or whatever he spent, are important not only for Senator Helms but for the people of North Carolina, and every State.

So I just wanted to make the point that we should be spending a lot more money than we are.

I'd like to make a brief comment about the Republican National Committee's bill. I believe they ought to be ashamed of themselves trying to change the rules to increase their fundraising strength at the expense of everybody else's. Senator, I don't believe you are responsible for that bill, but, if you were, I would ask you: What would you think if the Whigs had passed this bill back in the 1840's and 1850's? Probably wouldn't be a Republican Party. I hope the Democratic Party has enough sense to figure out what the Republican Party is trying to do and will oppose it.

As to public financing bills, I wish the proponents would be a little bit more honest in their statements. We already have public financing bills—or, excuse me, we already have public financing. Polling data reveal that when we ask the American people what is public financing, they say it is voluntary contributions from individuals. And when they find out that it's politicians forcing taxpayers to pay for their elections, they oppose it. And they don't think that's what public financing is.

Furthermore, every year the overwhelming majority of Americans vote on public financing in the form of their tax returns. Never, never, never has more than, I believe, 28 percent of the American public voted for it, meaning that 75 to 80 percent have opposed the bill.

I could say more things, but I would like to focus on the Boren bill, if I could.

The Boren bill, of course—and I think anybody who understands its impact realizes this—will actually increase the power of special interests.

If there is a limitation, the people who will give their money first will, of course, be who? The PAC's with money—the American Medical Association, the realtors, the AFL-CIO COPE. I believe Senator Boren knows this, and I find it very curious that he seems to be a friend of virtually all of these larger special interests.

So indeed what it would do is cut off the smaller PAC's who like to make $100 contributions and $250 contributions once the threshold is met. It will encourage independent expenditures.

This bill won't stop PAC's from raising money. I can't believe anybody would think that. They will just spend it in different ways—in mailings, newspaper ads, perhaps television ads, and several other things.

I think the response time proposal, the NCPAC amendment, if you will, is the silliest of all. I am sure it will be found unconstitutional, but, more important—I've said this over and over—Senator, we are willing to pay for response time. I've always said that. And the reason we are willing to is because, frankly, our types of commercials are better than response commercials, and the record has demonstrated that.

As a result, this bill will prevent smaller groups who want to make independent expenditures from doing so, because the mega-PAC's—NCPAC and others like us—will be able to make these independent expenditures, if we believe it's worth the price.

And, finally, the $750,000 limit—I find it intriguing that Senator Boren believes that a Senator can be bought for $1 million but he can't be bought for $750,000.

But let's talk a little bit about Senator Boren's concern with special interests. Originally I was going to read to you a list of the contributions that he has received—I won't; I'll just do some summaries.

In 1983, a nonelection year, Senator Boren received $97,000 from oil and gas industry executives; he received tens of thousands of dollars from bankers. And, interestingly enough, he received thousands of dollars from housewives in Oklahoma. Now, I can imagine the housewives in Oklahoma quilting and having bake sales so they could give thousands of dollar contributions to Senator Boren.

But, of course, what Senator Boren was doing was hiding contributions—as simple as that.

I don't think that serves the purpose, and what it demonstrates is that Senator Boren didn't want anybody to know who his special interests were.

By Senator Boren's reasoning, and not by mine, Senator Boren apparently is as corrupt as the other Senators he sits with; he just happens to sell to other special interests, including the housewives' special interest, for much smaller amounts.

And, of course, the point is—the point relates to the whole question of special interests.

There are two ways special interests are asserted on this body, and I happen to support both ways. I think special interest is absolutely fine. I'm a special interest, you are a special interest, the AMA is a special interest, a voter who gives $25 to his local politician or votes for him, merely votes for him, is indeed a special interest.

We are all trying to influence what you, Senator Mathias, and your colleagues do; we are all doing it.

Why there is such a concern with political action committees and not with the other side of the ledger, the lobbying side, I don't know.

I am near the end of my remarks. I would like to talk, however, about a semisecret organization which is trying to influence Congress to support its narrow little issue agenda. In 1985 it spent $8.7 million in that process. NCPAC, the largest PAC in the country, spent $5 million, just to put it in perspective.

How did they spend their money? We really don't know. We have very little idea. This is their lobbying disclosure bill—and they tell interesting things in it about, oh, that so and so, one of the staff members, was paid expenses for cab fare and the printers they use and Western Union and so on and so forth. It says absolutely nothing.

Who is this semisecret organization? It's Common Cause—trying to limit our freedom, limit our access—and they are hiding information.

Now, in all fairness, Senator, Common Cause does much better than anybody else in these disclosures.

This is the disclosure of a tiny little organization called the AFL-CIO, and, as we all know, the AFL-CIO spent $250,000 trying to influence Congress last year—a laughable proposition, a laughable proposition.

This is the National Conservative Political Action Committee's filing for 1985 a nonelection year. And, as you can see, our disclosure vastly exceeds these other organizations that are spending billions of dollars to influence you, Senator. While there are 4,000 PAC's, you certainly know that there are more than 4,000 lobbyists wandering all over this Hill. Common Cause knows this.

They know by stopping the influence and power of people like NCPAC and the little PAC's that give their $50 contributions, and so on and so forth, and the AMA and the realtors—they are by nature increasing their own power. They know it, and that is their motivation.

They also know that if the milk lobby had to give up either its lobbying operation or its PAC, it would give up its PAC in a second. The American Israeli Public Affairs Council, one of the strongest, most effective lobbyist organizations, doesn't even have a political action committee.

So if we are really talking about special interests and their ability to get the Congress to do what we want, we could do a couple of things. First of all, we could make these people, who are laughing at you, Senator, and laughing at this country by not telling people how they spent their money, coming to this Congress with their hands out for my taxpayers' money and everybody else's, and we could make them do what we do. At least we could make them disclose. Maybe we ought to limit the number of times they can meet with Senators, the amount of money they can spend on a program, the amount of money they can spend dealing with one particular issue or one particular Senator. Or we could ban Fred Wertheimer and his cohort of colleagues from the Halls of Congress. But, of course, that would be as silly and as unconstitutional as these other bills.

I had other remarks, but I know you are pressed for time.

[The prepared statement of Mr. Dolan follows:]

### PREPARED STATEMENT OF JOHN T. (TERRY) DOLAN, CHAIRMAN, NATIONAL CONSERVATIVE POLITICAL ACTION COMMITTEE

The most recent example of Capitol Hill follies are S. 59, S. 1787, S. 1806, and S. 1891, all amendments to the Federal Elections Campaign Act.

These nonsensical pieces of legislation include limiting political action committee (PAC) contributions to candidates for federal office, increasing the roles of the two political parties, and restricting contributions entirely by turning to public financing.

The Supreme Court has ruled that a financial contribution is a form of free speech. Voting is not just the act of walking into a polling booth and pulling a lever. We vote with our feet, with our opinions, and with our dollars. To limit the use of money in elections is to limit the First Amendment. The decision by a group or an individual to contribute to a candidate for office is a form of expression—an exercise of one's First Amendment rights.

Yet Congress, in its finite wisdom, chose some years ago to limit free participation by individuals in choosing their representatives. The so-called reforms of the post-Watergate era actually made it more difficult for a challenging candidate to unseat an incumbent while making it easier for incumbents to be re-elected. This is diametrically opposed to what these "reforms" were intended to accomplish.

An outgrowth of the "reforms" was the proliferation of political action committees, which, incidentally, have been around since the 1940's. PACs grew because of legislation that was introduced by a paranoid Congress in the mid-Seventies.

As a result, members of Congress now introduce all types of "campaign reform" legislation aimed at PACs, which also happens to be one of the easiest ways to generate press coverage. The standard pattern is to introduce a bill with all sorts of hoopla and fanfare, get an op-ed in the *Washington Post* and the hometown newspapers, get some television coverage, hold meaningless hearings, and let the bill die a slow death—depending, of course, on the duration of press coverage. In the meantime, thousands of tax dollars are wasted promoting the representative as a champion of "clean campaigns" while constitutional scholars tear apart the proposal.

The dirty little secret underlying all of these bills, of course, is power. Most incumbent members of Congress, once in office, don't like to be inconvenienced with the nuisance of having to face either the voters or a strong challenger every two or six years.

The premise behind the Boren bill is that PAC's and Senators are so corrupt that PACs only give to incumbents to buy their votes, while never helping challengers.

While I believe all bills currently dealing with so-called "campaign reform" should be defeated, I want to focus on the Boren bill.

The Boren bill would place a ceiling on the amount candidates may accept from PACs, cutting off many people from contributing to candidates who share their philosophy. This is an unwarranted intrusion on the rights of citizens to participate in the political process.

The ceiling is also self-defeating in that it unfairly favors larger PACs, again by shutting out the vast majority of people who contribute to the medium and small PACs. These smaller PACs do not have the means to make their contributions far in advance of elections, which means the larger PACs will contribute the maximum allowed by the ceiling sooner.

The red tape and procedural problems created by the Boren bill would be tremendous. How is a PAC to know if a candidate has reached his threshold before making a contribution? Will a candidate be required to accept contributions on a first come basis? Will PACs have to wait to file disclosure reports until after the candidate decided whether or not he can accept a contribution?

Finally, the requirement that broadcasters provide free response time for independent expenditures to protect candidates from "unfair" attacks is also ridiculous. An independent expenditure is just that—independent. The endorsed candidate has no input or control over an independent group or individual's message or action. What if a candidate does not want the endorsement of a particular group? Should his opponent be given valuable air time for free to counter the charges of an independent third party?

If Senator Boren is sincerely interested in helping challengers, he should consider these reforms:

(1) Ban only incumbents from taking PAC contributions. This way, they will no longer have to go through anti-PAC gyrations in Congress, thereby saving taxpayers' money.

(2) Cut Capitol Hill staffs in half. Members of Congress spend millions on staff positions, and these people in turn spend millions on such worthy projects as "Congressional Newsletters," (an oxymoron if there ever was one).

(3) Repeal franking privileges. An estimated 97% of congressional mail is unsolicited, meaning no one wants to hear from his representative unless he needs to. The lion's share of the millions of pieces of mail sent out by Congress are designed to get a member's name out, improve his favorable ratings, and improve his chances for re-election.

Congressional "newsletters" got so out of hand that Congress finally screwed up enough courage to regulate how many times a Member's mug shot and name could appear in them.

(4) Limit incumbents to raising and spending only $25,000, while allowing challengers to raise and spend any amount of money they wish.

(5) Bar incumbents from any television advertising until one month before the election. This will give the challenger time to build his identification and favorable ratings, using his PAC and individual contributions, to levels similar to the incumbent's who use tax dollars for the same purposes.

The proposals are, of course, tongue-in-cheek, but they are no more ridiculous then the current masterpieces coming out of Congress.

The problem with Senator Boren and proponents of so-called campaign reform is that they have conveniently forgotten that the Constitution provides free speech, free assembly, and the right to associate with whom we wish; that these rights are for everybody, not just liberal incumbents who pay lip service to the First Amendment.

Free speech and political contributions are in fact synonomous. PACs merely gather together individuals who share a common goal. There is nothing insidious about this. There is something insidious about abusing power and shutting off free and open debate.

The proposal would also mandate that if independent campaigns are waged against an incumbent, that incumbent would receive free airtime from the television station that runs the commercial, to counter the challenger's claims. As far as I know, forced property transfers are still unconstitutional, and forcing privately-owned corporations to give free air-time to an incumbent is just that—unconstitutional.

There is a simple way to eliminate special interests:

Ban all lobbyists from the halls of Congress. Of course, that would be unconstitutional. Almost as unconstitutional as these bills.

The CHAIRMAN. Thank you. I have to think about the special interests of the other witnesses who are here.

Mr. DOLAN. Thank you.

The CHAIRMAN. Just let me make one comment. You cited the North Carolina election as an example of being able to increase voter participation by having money sloshing around in large quantities, and I think it is an interesting example.

In 1984 the nationwide turnout was 53.3 percent, which is not a particularly admirable figure.

Mr. DOLAN. It did go up slightly, though, didn't it?

The CHAIRMAN. 53.3. The three races which were the most expensive in 1984 were North Carolina, West Virginia, and Texas.

It's interesting to reflect what spending more money in North Carolina, West Virginia, and Texas did to the participation rate. In North Carolina, it was 47.7 percent, lower than the national average; in West Virginia, it was 51.3 percent, also lower than the national average; and in Texas, just about like North Carolina, it was 47 percent even, I believe.

Now, in North Carolina, the expenditures amounted to $11.66 per vote cast; in West Virginia to $18.37 per vote cast; and in Texas, $2.55 per vote cast.

So for those expenditures there was a very disappointing result. I believe I have to end up where I started, that the evidence does not support the thesis that throwing money at elections can——

Mr. DOLAN. Well, if you distort your statistics, that will indeed happen. Senator, you know what the voter participation rates of those States were; they have always been low. And I will say it again: the biggest increase in registration was in North Carolina, in the Nation. As a matter of fact, I believe it may be in actual numbers, but I know it was in per capita activity. The biggest increase in voter turnout was in North Carolina. Those States have in the past had extraordinarily bad records of voter registration and turnout.

I think there is no question; I honestly don't know what the changes were in West Virginia and Texas in the question of registration and the increase in turnout, so I won't comment about them. But I will comment about the most expensive one in the country, and I know that the facts do support me in that regard.

I don't think it's fair to say that because they were so miserable before and they only increased extraordinarily dramatically, and still were below the national average, that you can draw the conclusion that money which clearly did inform the people of North Carolina—those people were probably going crazy with all the political commercials that were on the air and the voter registration activities and so on and so forth—but money that informs people has a tendency to sell products. It's as simple as that. It has a tendency to sell MacDonald's and it has a tendency to sell candidates for office.

I don't think that's bad. I think people ought to know. And if it was my choice, I would introduce a bill here to make sure that every Senate race spent $5 or $10 million to make sure our people know what they are doing when they walk into that voting booth.

The CHAIRMAN. All right, Mr. Dolan, we will leave you on that high note.

Mr. DOLAN. Thank you, sir.

The CHAIRMAN. Our next witness, Mr. Mark Green, president of Democracy Project, New York.

## TESTIMONY OF MARK GREEN, PRESIDENT, DEMOCRACY PROJECT

Mr. GREEN. Thank you, Mr. Chairman. Despite the fact that my frequent debating opponent, Terry Dolan, personified the Billings' rule that often the summary exceeds the statement, I will attempt to briefly summarize my more extended statement and respond to any questions you might have.

The CHAIRMAN. I will appreciate that.

Mr. GREEN. I very much appreciate your invitation to speak here today. I have long been personally and deeply interested in the subject of campaign finance in several capacities, first as an author of a book on the Congress concerned with this topic, "Who Runs Congress?" Second, as a lobbyist, the head of a consumer lobby, Congress Watch, in the 1970's; third, as an advisor to a Presidential candidate who was the first candidate to reject PAC funds, Senator Hart, your colleague; and, fourth, as a candidate myself now for the U.S. Senate from New York. In the interests of nonpartisanship, I will not name the junior Senator from New York I am running against.

The value of these hearings is twofold, at least: Educational and prescriptive. That is, is there an abuse that needs remedy, and is there a remedy?

I think the answers to both are irrefutably yes. First let me discuss the abuse.

We are worried not with $25 contributions from little-known housewives who want good government or integrity in government. We are concerned with "legislatively interested" money in large amounts, money that "gives to get," money that correlates, sadly, too often with votes. When commentators criticize PAC funds that seem to lead causally, not coincidentally, to predictable votes, Members often get angry publicly and say: Are you implying that the money buys a vote? But privately all of us who either run for office or who serve in office have to acknowledge the accuracy of Representative Barney Frank's observation that "We are the only human beings in the world who are expected to take thousands of dollars from perfect strangers on important matters and not be affected by it."

You cannot repeal a law of human nature.

Second, PAC's discriminate. That is, who has access to political action committees and their moneys? Is it the Hispanic child on the Lower East Side of Manhattan who has a PAC, the unemployed teenager in Des Moines, a small farmer going under? This is not a partisan point. It was Majority Leader Robert Dole who said "There is no poor PAC."

Third, there are what a judge has called eloquently "the silent casualties of the political process" because of the PAC system—citizens of quality who never run because they know beforehand they can't raise big early money.

As I began my candidacy, many leaders of my party—I'm a Democrat—said to me not who are you, not what do you stand for, not what have you done, but where is your $5 million up front? I must tell you this can scare off a lot of good men and women who, unless they are born to the purple or have earned it, usually don't have $5 million up front when they begin a candidacy for one of the major organizations in the lives of Americans. There are an awful lot of men and women who never seek to serve in a democracy because they are scared off by their lack of access to wealth or political action committees.

When I have made criticisms like this in the past, as have so many others, like Ralph Nader and Fred Wertheimer, critics say: Where is the evidence?

Bernadette Budde, the able PAC directors of the Business Industry Political Action Committee, said to me "Show me the bodies" of Members of Congress who are actually influenced by campaign contributions; otherwise it's all hypothetical.

So in 1982, for a cover story I wrote for The New Republic magazine, I interviewed 29 Representatives and Senators. Not surprisingly, they did not use themselves as examples of money affecting their vote, but what they did do is give instances of colleagues of theirs who admitted that money bought access or worse.

Let me mention two out of a representative list of many more on pages 3 to 5 of my testimony. True, this is anecdotal, but there is no easy way to survey how frequently this happens, although it does happen.

Republican Representative Claudine Schneider of Rhode Island in 1982 tried to persuade a Republican colleague to oppose more funding for the Clinch River Breeder Reactor. He declined, explaining "Westinghouse is a big contributor of mine."

When Representative Dan Glickman of Kansas asked a colleague several years ago to join him in opposing a measure that would stop the Federal Trade Commission from regulating auto dealers, he was told "I am committed. I got a $10,000 check from the National Automobile Dealers Association. I can't change my vote now."

I think the evidence is overwhelming that bad and good people alike are naturally swayed in a process where you need money to run and win and the people who have the money have legislative demands on our time and our votes.

In conclusion, too often American versions of anarchists say that legislation always fails, that government is the problem—we are governed by the law of unintended consequences. I reject that, as a person who believes in Government and democracy. Some of the legislation lobbied for by Public Citizen and Common Cause has worked. And I think it's demonstrable that the laws affecting spending by Presidential candidates has worked to clean up a rotten system. There have been few, if any, charges of corruption at the Presidential spending level in the last several Presidential campaigns because of the post-Watergate reforms.

That leads to three conclusions: two pieces of legislation which are pending before you now, and a third I'd like to suggest.

As an individual, I do support the Boren-Goldwater S. 1806. It is a modest but still important step forward in capping the amount of money PAC's can give in the aggregate and can give specifically, from $5,000 to $3,000 per election. It is not a cure-all. But in a system of exponentially escalating expenditures, a cap can slow the process. Yes, it is merely a difference in degree, but, like a difference between hot and cold running water, at a certain point a difference in degree becomes a difference in kind.

Second, I enthusiastically support the bill of the Chairman and Senator Simon, S. 1787. Author-advocate Philip Stern, others, deserve enormous credit for thinking up and promoting the principle behind that bill. If we have partial and then full public financing for the presidency, why not for the Congress? How can we have a principle for the highest office in our land but not what is arguably the next highest office in the land? If it works for the No. 1 official, why not for the next hundred officials? We have a proven track record and it's pretested constitutionally: we know it's constitutional.

Last, may I suggest a fresh approach that I would urge the committee staff perhaps to look at more intensely than my small organization, the Democracy Project, is able to look at. The very first study we engaged in—we are a small public policy institute in New York—was to look at the cost of free or subsidized TV time for general election candidates. Nearly all western democracies guarantee time to candidates on the air. Most of them have State-owned television, unlike us, but still is it a desirable approach? We think it is.

What better use of the public airwaves than public education in public elections? It is one, of course, one of the only industries in America that is by statute publicly owned. We license private entrepreneurs to engage in programming to the American public. A condition of a license could easily be that every other year you provide a minimum amount of time in certain increments to qualified candidates in general elections. The qualification here, of course, is not a subjective test; it can be some numerical test, as each of us has in our own State, to get on a ballot, for example, signatures on petitions or moneys raised in a primary to demonstrate community support.

We are all concerned about budget constraints, of course, in 1986. The cost of this idea? We figured at a minimum it could be about 10 cents a citizen, or $21 million, for a process that would educate voters and reduce the terrible pressure on candidates to sacrifice integrity to raise the money in order to run successfully on television and radio.

To conclude, let me cite the not-so-amusing precedent of a former colleague of yours, Senator Mathias—he preceded you here by several decades—Boies Penrose, the famous Senator from Pennsylvania. He was a well-known glutton, weighed 350 pounds, and he had the virtue of candor. He once told a group of his supporters the following around the turn of the century:

> I believe in a division of labor: you send us to Congress; we pass laws under which you make money; and out of your profits you further contribute to our campaign funds to send us back again to pass more laws to enable you to make more money.

Well, very funny, except the joke is on us. Unless we stem the tide of PAC's that grew nearly a thousand percent in a decade, we risk losing our democracy to candidates who offer us more money than merit.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Green follows:]

## PREPARED STATEMENT OF MARK GREEN, PRESIDENT, DEMOCRACY PROJECT ON CAMPAIGN FINANCE REFORM

Mr. Chairman: This is the 8th time I have testified before Congress on the subject of campaign finance reform. The first time was in 1974, two years after my book *Who Runs Congress?* was first published. That year, campaign spending for congressional elections was $72 million, and political action committees spent $12 million. In the last election, congressional campaign spending rose to $377 million. And PACs gave a staggering $100 million—almost a thousand percent increase over 1974.

It is evident that such unrelenting growth in campaign spending in general and PAC spending in particular affects how the legislature works—and doesn't. First, money buys influence, access, or even votes themselves. When I testify at these hearings and imply that people "give to get"—that there is legislatively interested money—I sometimes encounter angry public denials. Yet privately, we all acknowledge the truth of Rep. Barney Frank's observation that "We are the only human beings in the world who are expected to take thousands of dollars from perfect strangers on important matters and not be affected by it."

Second, special interest money can paralyze Congress. In an institution that has more than 300 committees and subcommittees, it is not hard for monied interests to find a beachhead in one or more committees in order to stop legislation from going forward. Those of us who have lobbied Congress or state legislatures know how hard it is to get legislation enacted—and how easy it is to get legislation stymied. A vivid example is the extraordinary volume of spending (and lobbying) prompted by the merest whiff of tax reform.

Third, special interest PACs discriminate against the PAC-less. Who has access to PACs? Is it the Hispanic child on the lower east side of Manhattan who has a PAC? Is it an unemployed teenager in Buffalo, a small farmer going under, a consumer paying more for goods because of an antitrust exemption? And who has access to PAC money? It is not the first-time women or minority candidates, who might not have gone to school with the men who dominate PAC spending decisions. This is not a partisan point. For it was Majority Leader Robert Dole who noted "There's no PoorPAC."

And finally, the PAC process is a true incumbent-protection system, for the money goes predominantly to one party, the incumbency party, as Common Cause president Fred Wertheimer calls it. According to *What Price PACs?*, a Twentieth Century Fund study conducted by political scientist Frank Sorauf, in House elections in 1982, 67 percent of all PAC money went to incumbents; in the Senate, 64 percent went to incumbents. "Most PACs have parent organizations, and most of those organizations have legislative interests and Washington representatives," observes Sorauf. "Supporting incumbents is thus a strategy of risk avoidance, of consolidating and protecting influence already won; it is the strategy of the already influential."

### THE AVALANCHE OF EVIDENCE

Today, the Senate is seriously considering campaign finance reform for the first time since 1977. At this hearing and at prior sessions in the Fall, you have heard testimony about the rising costs of campaigns and the increasing role of political action committees. But the most persuasive testimony has come from Senators and Representatives themselves.

In response to a challenge from Bernadette Budde, the director of Business Industry PAC (BIPAC), to "show me the bodies" of members of Congress who were influenced by campaign contributions, I interviewed twenty-nine Representatives and Senators in 1982. Not surprisingly, the laws of human nature have not been repealed. Here is the avalanche of evidence:

Republican Representative Claudine Schneider of Rhode Island in 1982 tried to persuade a Republican colleague to oppose more funding for the Clinch River Breeder Reactor. He declined, explaining, "Westinghouse is a big contributor of mine."

Another Republican Representative, Jim Leach of Iowa, tells how he once suggested to an urban Democrat with no dairy constituency that it might be politically wisest for him to oppose a dairy price support measure, and was told, "Yeah, but their PAC gave me money. I have to support them."

A New York Democrat admitted that he voted for the Alaska Gas Pipeline, even though he opposed it on the merits, because "I didn't want the construction unions contributing to my opponent."

In the mid-1970s, a labor union that gave Rep. Leon Panetta (D-CA) a $1500 contribution asked for support of pending "cargo preference legislation." When Panetta asked about the substance of the bill, he was told, "I don't have to tell you anything substantively—we gave you money. We support the bill, and we expect you to." Panetta kicked the lobbyist out of his office, and voted no.

According to one PAC manager, a certain liberal Democratic Representative, unsure how to vote on the recent Reagan tax increase, was told by a business PAC that if he supported the bill, "the slate would be wiped clean" between them. The Democrat voted for the bill, for reasons having nothing to do with the business lobby. Yet when the PAC sent him a $500 check, he angrily returned it, telling the PAC manager, "It was like leaving a 20 cent tip." The PAC then doubled the contribution, which the Congressman accepted.

When Representative Dan Glickman of Kansas asked a colleague several years ago to join him in opposing a measure that would stop the Federal Trade Commission from regulating auto dealers, he was told, "I'm committed. I got a $10,000 check from the National Automobile Dealers Association. I can't change my vote now." (In a separate incident, the Iowa Beef PAC began a letter asking for Glickman's support on a bill by noting, "As we trust you will recall, the Political Action Committee of Iowa Beef Processors, Inc., has heretofore supported your candidacy . . ." Glickman sent back their $250, and then voted for the measure, as he originally intended to.)

A drug industry lobbyist told an aide to Representative Barney Frank of Massachusetts that if Frank could co-sponsor an industry-sponsored Drug Patent Act, the lobbyist would come to Frank's first fund-raiser in Washington, D.C. Frank told the lobbyist, "Go to hell."

Former Representative Millicent Fenwick recalled, "I wasn't down here but two months [in 1974], at a dinner for Alvin Toffler, when I sat down next to a reformer in Congress and asked if he'd be overriding a President Ford veto. He said, 'Are you kidding? I took $58,000 from labor, and they want it.' "

Representative Mike Synar, Democrat of Oklahoma, says, "I go out on the floor and say to a member, 'I need your help on this bill,' and often he will say, 'I can't do that, I got $5,000 from a special interest.' So I no longer lobby Congressmen. I lobby the lobbyists to lobby the Congressmen."

We are all familiar with the correlation studies conducted by Common Cause and Public Citizen's Congress Watch. These studies have found that when specific economic interests invest substantial amounts in a large number of legislators before key votes, the dividends roll in.

And the past few years have seen numerous journalistic accounts, all persuasively documenting the impact that campaign money has on our democracy and our legislature. You are undoubtedly familiar with them: Elizabeth Drew's *Politics and Money: The New Road to Corruption*; sociologist Amitai Etzioni's *Capital Corruption*; and perhaps most impressively, the previously mentioned study conducted for the 20th Century Fund by political scientist Frank Sorauf, *What Price PACs*? These exposés usually appear as the election cycle reaches its apogee, so we can expect further documentation soon to come. And with every article, every book, public confidence in our democratic institutions diminishes.

We err if we look for a "smoking gun"—a Watergate tape of Dita Beard memo that will sensationally convince even the most self-interested skeptic that the system needs to change. *For the system itself is the smoking gun.*

## THE CASE FOR PACS

Despite this damning and irrefutable empirical case, some beneficiaries of the PAC process cast about for rationales for the current system. In recent years, their arguments have been widely heard. Despite all appearances, they argue, PACs actually *increase* participation and democracy. Their arguments deserve scrutiny lest they become accepted by default. Like popcorn, they contain a kernel of truth puffed up beyond recognition.

Let me walk through some of them with you.

*PACs are merely exercising the right of free speech.* This assertion has been made by, among others, Eugene McCarthy, the American Civil Liberties Union and that well-known champion of the Bill of Rights, Mobil Oil. "When you cut through all the anti-PAC rhetoric," stated a Mobil advertisement, "it becomes obvious that PAC opponents don't really want the voices of average citizens to be amplified."

Are PAC contributions free speech? Although money talks in American politics, that has always been the *problem*, not the goal. Money isn't speech; speech is speech.

And if money were speech, would bribery be constitutionally protected? If so, large contributors could effectively overturn the Supreme Court's reapportionment decisions; instead of one person, one vote, the standards would be many dollars, many votes. If a contribution can buy a legislative result and drown out the voices of thousands of citizens, free speech has been stifled, not encouraged.

*PACs account for only a small part of all political contributions.* As Richard Armstrong, head of the Public Affairs Council, a pro-business group, wrote in *Newsweek* a few years ago, "The truth is that all PACs combined, including those of labor, contribute less than one-fourth of the aggregate amount spent on election campaigns."

But a PAC need not bankroll an entire campaign to be remembered by a politician after the votes are counted. Furthermore, aggregate statistics are misleading because the inclusion of candidates who get almost no PAC money pulls down the average. In any event, PACs have supplied over 40 percent of the campaign treasuries of winning House candidates in recent elections.

Finally, PAC money, like snow in the mountains, gathers at the peaks. A large portion of it goes to committee chairs and party leaders who are most able to return favors. In 1984 the House minority leader, Robert Michel, received 58 percent of his campaign funds from PACs; House Ways and Means Committee chairman Dan Rostenkowski filled 63 percent of his coffers with PAC money.

*If you take inflation into account, campaign spending has increased only 20 percent or so in the last five years."* So wrote Robert Samuelson in a review panning Elizabeth Drew's book in *The New Republic.*

Actually campaign spending has skyrocketed. Between 1972 and 1982, while the Consumer Price Index doubled, spending for House races increased 450 percent and for Senate races, 500 percent. In 1972 the average first-term representative spent less than $100,000; in 1982, about $300,000.

Consider the cases of John Culver and Peter Kostmayer. In the 1974 Iowa contest for the Senate between Culver and David Stanley, the opponents' combined expenditure was $807,037; when Culver ran for re-election against Charles Grassley in 1980, it was $3.9 million—a 487 percent increase in just one term. Kostmayer spent $58,000 to win his House seat in 1976, lost in 1980 and then spent $600,000 to win again in 1982—more than a 1,000 percent increase.

*Business isn't monolithic, so business contributions have a diffuse impact.* "Business rarely takes a uniform position on *any* political issue," wrote Armstrong. PAC critics, he added, "forget the many conflicts within the business community itself—big business versus small business, industry versus industry, free trade versus protectionism, and so on."

It's true that divisions can occur within an industry on specific issues—such as airline deregulation, for example. More frequently, however, business does present a united front. Is any chemical company lobbying for a stronger Superfund? Did any commodities traders' group oppose the bill that gave a tax break to commodities traders? And as the securities industry and the banks fight it out to shape the future of our financial system, where is the PAC that fights for depositors and small investors?

*PAC gifts aren't inducements for future votes; they're rewards for a prior record.* According to Representative Beryl Anthony, when he gets $5000 from a PAC it "means somebody has approved of my prior service in Congress" and nothing more. If a legislator's support for the special interest group's position preceded the contribution, how could it have *resulted from* the contribution?

Then why do so many PACs cross-examine candidates in questionnaires and in person about their positions on pending matters? As Amitai Etzioni points out, "Unlike rocks, people can anticipate; they can act now in anticipation of payoff to follow." And according to Jay Angoff, when he was an attorney at Public Citizen's Congress Watch: "Whether a member votes for legislation because he has received money from a certain group or receives money because he has voted for legislation sought by the group, it makes no difference to the consumer. Either way, people who vote to further the interests of the business lobbies that contribute to their campaign continue to get ahead."

*The average PAC gift is too small to make a difference.* Since PAC gifts to candidates average around $600, even a lawmaker eager to sell out would be unmoved by a typical gift. Political scientist Michael Malbin observes that while several banking PACs gave Senator John Tower a total of $90,000 when he ran for re-election in 1978, his campaign spent $4 million; so banking PACs accounted for 2.5 percent of the total. Malbin asks, "Can anyone seriously argue that Tower's positions were influenced by his greed for that bit of money?"

Even in Senate races, which are far more expensive than House races, $90,000 is still $90,000. And for a House candidate, $10,000 out of total costs of $300,000, say, is surely memorable, especially if it comes early in the campaign, when a candidate needs to show credibility—or late, for that crucial media buy. Six years after I ran for the House in Manhattan, I still remember everyone who gave me $1000 contributions and at what stage in the campaign. How many members of Congress can't?

*Even a $5,000 gift isn't enough to buy a member of Congress.* According to a Mobil advertisement, "That's hardly enough to corrupt a legislator, even if he or she were disposed to be corrupted."

To that Representative Tom Downey (D-NY) quipped, "You can't buy a Congressman for $5,000, but you can buy his vote." No PAC gift would sway Senator Proxmire (D-WI) in his support of the Genocide Treaty or Representative Henry Hyde (R-IL) in his opposition to abortion, but most of the 600-odd votes a year in Congress do not involve such deep moral or philosophical committments. As a Democratic lawmaker told *Newsday's* Judith Bender, "If you're on the fence and it doesn't matter to you or your constituents which way you vote, but it matters to some of your biggest contributors, your mind is going to be made up very easily, because the vast majority of issues are not war and peace, equity and justice. They are really very different shades of gray."

*PACs are public.* They are at least an improvement over Watergate-era practices like passing cash-filled shopping bags and making secret infusions from corporate treasuries. "The signal virtue of the 1974 election law was that it required full disclosure of who is giving how much to whom," editorialzied *The New Republic* in 1984. Critics should "concentrate on looking through the campaign finance and Congressional voting records to see who is in bed with whom."

No one is advocating a return to the days of Bobby Baker and Maurice Stans, but disclosure, however necessary, is not a sufficient step toward cleaning up the campaign financing process, for several reasons.

PAC men in bed with legislators do not receive the same media attention as, say, cohabitating movie stars. And disclosure isn't good enough if *both* candidates in a race are equally in hock to interest groups—a not uncommon occurrence, since almost all candidates accept PAC gifts. Finally, a Democracy Project study found that 20 percent of contributions to Republicans in close House races in the 1980 election came from business PACs that gave after the October 15 filing deadline. While legal, such quiet gifts evade the intent of campaign finance laws, for they avoid public scrutiny until after the election.

*PACs increase political participation.* According to a survey by Herbert Alexander, the political scientists and campaign finance expert, 100,000 people gave to business PACs between 1979 and 1980. An advertisement sponsored by United Technologies calls this phenomenon "a welcome shift toward the grassroots."

Individual PAC donors, however, participate in the least participatory way. PACs take small contributions from donors, but the donors have little if any say over how the money is disbursed. Representative Leach worries that since "groups seldom reflect the same collective judgment as their members, [the views of PAC managers], not the small contributors to their associations, become the views that carry influence."

And the way PACs raise money is frequently coercive. Consider how DartPac dunned Dart Company executives with "donation guidelines," follow-up letters pointing out that contributions were being compared with salary, group sessions and finally one-on-one grillings. In 1978, according to Nicholas Goldberg in *The Washington Monthly*, 83 percent of Dart executives contributed, giving an average of $1,030, as opposed to 0.06 percent of the company's stockholders, who averaged $27.45 each.

PAC defenders are trying to perform the political equivalent of making water run uphill. Despite the best efforts of cloistered academics and corporate public relations aides, it is impossible to deny that the swelling volume of PAC money is distorting if not corrupting the legislative process. It is my impression that after hearing these counter-arguments, the public and Congress itself have concluded that the case for PACs falls short.

## POSSIBILITIES FOR REFORM

Several proposals are currently before this committee. I would like to address myself to two of them that have substantial merit. I will then turn to two proposals not before the committee—one worth avoiding, and one worth considering.

*S. 1806*, introduced by Senator Boren, the near-passage of which began the momentum for the current spate of reform proposals, deserves support as a bare minimum reform. Its passage would freshen the air by placing a cap on the currently unlimited availability of PAC funds to candidates.

But the bill would be limited to its impact. It would ease one of the worst symptoms of the current system, *viz.*, candidates' reliance on PAC funds. However, it would not address the problem's root: the high cost of campaigning and the perceived need for ever-increasing sums in the campaign treasury. It would continue the current incumbent advantage by dint of earlier and surer access to campaign funds. And it would do little to offset the impact of an early and well-timed PAC gift on a campaign. For example, in New York, my home state, the bill would limit PAC gifts to $750,000—an improvement over current law but still skyscraper-high.

In short, to pass only S. 1806 and nothing else might mean losing the opportunity to achieve real and lasting reform in the system.

*S. 1787*, introduced by Senators Mathias, Simon, and others, on the other hand, would go far to restore the integrity of the campaign system.

It has two prime virtues. First, it copies the public finance system that has successfully cleaned up our presidential campaigns. No longer do we hear of illegal corporate contributions and high government officials lugging satchelfuls of cash. And the charge that public financing is an incumbents protection act is rebutted by the experience of the first two times it was tried—when the incumbents, Ford and Carter, both lost.

Second, the reform is constitutional. When the Supreme Court struck down other parts of the 1974 reform law in its *Buckley* v. *Valeo* decision, it explicitly let stand a voluntary public finance plan that gives candidates a choice whether to opt for the public funding in exchange for other limits. This bill has the rare advantage of being constitutionally pre-tested, and found sturdy.

Partial public funding of Senate and House elections offers the best chance of ending this mad cycle of campaign-and-spend.

*A hundred percent tax credit for individual contribution*—The House-passed tax bill contains a full tax credit for campaign contributions. This would essentially render the contribution cost-free to the contributor—and could help democratize an overall campaign reform scheme. If the need for funds and the power of big givers is diminished, it may make sense to increase the incentives for small donors. But the tax credit as passed by the House, standing alone and without needed safeguards to prevent PAC-organized bundling of small checks, might well make the current system even worse.

Bundling is a system in which PAC managers evade the current $10,000 spending limit by gathering together small checks from individual donors and giving them to the candidate in a single package. It evades the letter of the campaign law—while continuing to magnify the specially-interested voice of the PAC. By making such small contributions literally cost-free to individuals who might be in a corporation, trade association or labor union with a PAC, the House bill would greatly enhance PACs' ability to bundle at will. Morover, PACs would still be able to spend their own funds to organize such an effort. And since the tax credit can be taken annually, incumbents with perhaps a six year fundraising lead-time will be far more able to take advantage of the device than challengers who campaign only in the election year.

*Guaranteed or free television and radio time for bona fide candidates*—One alternative missing from the pending legislation would address the problem by removing the impetus for campaign spending sprees. Candidates need television and radio exposure like a soprano needs oxygen. Without the need to pay for such amplification, candidates have much less incentive to raise millions of dollars. This alternative would go to the root of this need by guaranteeing access to the electronic soapbox.

The Democracy Project has proposed a Voter Access Plan that would give voters easy access to candidates by providing them with a minimum of free television broadcast time in general elections. The Voter Access Plan would cost only $21 million, or less than a dime per citizen, with funds coming in part from the existing surplus in the tax check-off fund for presidential campaigns. (For urban areas where there are many congressional districts in one media market, a qualified candidate would have the option of "cashing in" the air time for any equivalent mailing.) Great Britain, France, West Germany, and Sweden, among other countries, routinely provide some free air time for candidates.

This plan has several advantages. First, because it is inexpensive, involves voluntary taxpayer funding, and does not require more federal bureaucracy, it has the potential to attract bipartisan support. Second, it removes the need for PACs without limiting private political activity. Finally, it recognizes that the spending floor is more important than a spending ceiling: it guarantees that every candidate will have access to the public, even if the other candidate has more to spend.

In conclusion, I would urge congressional action on one of these suggested reforms now, or else the spirit of Senator Boies Penrose will continue to rule our rulers. Penrose, of course was the turn of the century glutton who once told a group of his business supporters, "I believe in a division of labor. You send us to Congress; we pass laws under . . . which you make money; . . . and out of your profits you further contribute to our campaign funds to send us back again to pass more laws to enable you to make more money."

Very funny. Except the joke's on us. Unless stem the tide of PACs that grow 1,000 percent a decade, we risk losing our democracy to candidates with more money than merit.

The **Chairman**. Thank you very much, Mr. Green. I regret that the roll call vote now in progress will prevent me from putting any questions to you orally, but we will have some in writing which we will ask you to respond to for the record.

Mr. **Green**. Thank you.

The **Chairman**. I'll have to suspend for a few minutes to go to the floor. Our next witnesses are Mr. Jon Grunseth and Mr. Reed Larson. I might suggest that they come to the table while I am absent—come to the table together. If Senator Warner returns before I do, he can resume the session, but, in any event, we will try to finish up as quickly as possible.

[Brief recess.]

The **Chairman**. The committee will come to order.

Mr. Grunseth, I will lay you both under the injunction that these bells are ringing, so, in order to complete your testimony, I will ask you to be just as concise as possible.

## TESTIMONY OF JON GRUNSETH, VICE PRESIDENT, ECONOMICS LABORATORY, INC., AND REED LARSON, PRESIDENT, NATIONAL RIGHT TO WORK COMMITTEE

Mr. **Grunseth**. Thank you very much, Mr. Chairman. I promise you that I can I think get through this quicker than maybe some of the others have.

I am Jon Grunseth, vice president of public affairs for Economics Laboratory, Inc., in St. Paul, MN. I am pleased to have the opportunity to testify on behalf of the U.S. Chamber of Commerce and its 180,000 members on proposed limits on political action committees and general campaign finance reform.

My philosophy on political action committees has been developed by a variety of personal, political experiences over the past 15 years: currently, I manage Economics Laboratory's political action committee, ELPAC; in 1982, I served as Senator David Durenberger's political action committee chairman in an effort that raised $1.1 million from political action committees; in 1974, I was a candidate for Congress and actively solicited political action committee contributions; and I was an administrative assistant to a Member of the House of Representatives, who also actively solicited contributions from political action committees.

This broad experience in political fundraising has allowed me to view first hand all aspects of the debate surrounding the role of political action committees in the political process.

The chamber supports the continued involvement of political action committees in our political process. Organized political activity is healthy and shows that enough individuals care about what is happening to form a group dedicated to certain goals. It is apparent that political action committees are a very popular instrument for voluntary, individual, political participation. The continued growth of political action committees gives ample evidence that

Americans find them representative of their individual and collective beliefs.

More and more people have become involved in the political process because of these committees. In fact, an estimated 4.3 million individuals voluntarily contribute to committees sponsored by corporations, unions, and trade, and professional associations for their employees and/or members. People who give to these committees do so for reasons not unlike those who contribute to such causes as the United Way. The natural inclination is for people not to become involved, and a group provides motivation and a feeling of being able to make a difference. Political action committees have fulfilled this role for millions of individuals who may not otherwise have involved themselves in the very heart of our democratic process—elections. The dollars are the same to a candidate whether an individual contributes directly or through a committee, but a person might not contribute at all if not through a committee.

Several misconceptions about the role of political action committees in the political process have become apparent in public debate. Most revolve around the belief that such committees dominate congressional campaigns. In each of the last three elections, though, political action committee contributions have accounted for only about one-quarter of congressional candidate receipts. Three-quarters of congressional campaign funds have come from other sources. Whatever the vehicle, we should remember that there is truly only one source of campaign funds—voluntary donations from individuals.

A common misconception about political action committees is that they each contribute hundreds of thousands of dollars to congressional campaigns. However, according to Federal Election Commission data, 70 percent of the political action committees active in the 1984 elections contributed less than $20,000 each to Federal candidates. A survey of corporate employee committees conducted by the U.S. Chamber and other business groups revealed that of the committees in the survey the average contribution to House candidates was only $295 and the average contribution to a Senate candidate was $1,103. These amounts are further evidence that most political action committees do not contribute large amounts or approach the $5,000 per candidate maximum allowed by law—although we support the right of those who wish to do so to contribute the maximum.

This survey also gives a good picture of the average corporate employee committee and its contributors. For committees responding to the survey, the average employee contribution was $112 per year, and over 60 percent of the contributions were under $100 annually. The survey respondents had an average of 425 contributors, and 98 percent had an employee committee to determine to whom contributions were to be made.

Political action committees are as diverse as the interests and philosophies of their individual contributors. Our employee committee at Economics Laboratory was founded in 1978. We are a relatively small committee that raises and spends approximately $30,000 per election cycle. Our average contribution to both House and Senate candidates is slightly above the survey average previously cited.

We are a committee that believes our purpose is to change the composition of Congress. Indeed, our bylaws specify that we should support only business-oriented candidates. ELPAC generally follows the endorsement criteria established by the U.S. Chamber of Commerce and the Business-Industry Political Action Committee, [BIPAC].

Our employees do not believe in access. We are not a committee that gives liberally to incumbents without regard to their political persuasion. We simply would like to see many more business-oriented candidates elected in the U.S. House of Representatives and the U.S. Senate.

In recent years, ELPAC has given between 50 and 60 percent of all its contributions to nonincumbents, both challengers of incumbents and candidates for open seats. We believe that simply playing the back-the-incumbents game is the greatest pitfall that some committees fall into. Our contributors think that standing for something is important: to have a philosophy or belief that rises above narrow or special interests. I hasten to mention that we would never advocate that a committee's philosophical or lack of philosophical behavior be regulated by legislation, just as we would never advocate that an individual contributor be penalized for lack of consistency.

It is unfortunate that some political action committee contribution patterns are inconsistent, just as it is unfortunate that some individuals will give to both candidates in the same race or will give to Members of Congress who have diametrically opposed views on a subject. Nevertheless, the beauty of a free society is that it allows for all forms of political behavior whether or not it makes sense.

The chamber is opposed to S. 1806, introduced by Senator Boren. This measure is an intrusion into the rights of individuals to participate in the political process through political action committees. By placing a ceiling on the amount candidates may accept from these committees, many will be prevented from contributing to candidates who share their philosophy.

Because of inflation, political donations in 1984 were worth about half of their 1974 value, the year in which the contribution limits were established. Raising the contribution limits for individuals and political action committees to account for inflation is certainly appropriate. Therefore, the chamber would support raising individual limits as suggested in Senator Boren's bill and oppose lowering the limit on political action committee contributions.

The restrictions on political action committee activity proposed in S. 1806 will encourage such committees to use independent expenditures to support favored candidates, which would give candidates and parties less control over their own campaigns. The chamber fully supports the first amendment right of any individual or group to make independent expenditures and merely mentions a possible unintended consequence of the legislation. In addition, any limit on campaign contributions naturally favors incumbents by denying challengers access to crucial funding sources.

Further, the measure would create a procedural nightmare. There is no timely way for political action committees to know whether or not candidates have reached their threshold before making a contribution. Would candidates be required to accept contributions on a first-come basis? Could candidates accept a contribution from one committee and refund it later so a different committee could contribute? Would political action committee managers be required to defer filing disclosure reports until after receiving notice from the candidate as to whether or not the contribution was accepted, which would hamper full and timely disclosure?

The requirement in S. 1806 that broadcasters provide so-called free response time for independent expenditures is ill conceived as well. The goal may be to protect candidates from attacks perceived to be unfair, but this provision also provides free time if an opponent is endorsed through independent expenditures. A candidate who is supported by an independent group of individuals via the airwaves by definition has no control over the message or the action. Picture an endorsement by "Drunk Drivers for Smith." Candidate Smith may not want the endorsement but is stuck with it, and then is penalized further by the opponent's receiving free air time to respond.

S. 1806 is a reaction to misconceptions about political action committees, places blame where it does not belong, and is certainly susceptible to numerous unintended consequences. We should remember that candidates are free to impose either the proposed limits of this bill or any other set of personal guidelines without requiring new laws. Candidates are now free to design fundraising activities so that small contributions from their home States are emphasized and political action committee contributions are limited. Several Members of the Congress successfully have done just that. Personal preference does not make necessarily good legislation.

The chamber also opposes any attempt to impose involuntary taxpayer financing of congressional elections, such as S. 1787, introduced by Senator Mathias. Taxpayer subsidies of Federal elections would dangerously extend the Government's role in a traditionally voluntary political process based on individual choice. Citizens should not be forced to support, through their tax dollars, political candidates whose philosophies they may oppose or even support. Contributions should be freely given or freely withheld. In addition, fundraising has traditionally forced candidates to articulate their views in order to gain support and help to determine the pulse and needs of their district or State. Under taxpayer financing, this process would be virtually eliminated.

The public has consistently rejected using general tax revenues to support congressional candidates. A poll conducted this year by Civic Service, Inc., found that 70.6 percent of the public opposed taxpayer financing of congressional elections; 73 percent of those surveyed also opposed the current system of financing Presidential elections. This poll has been conducted annually since 1977, and this year's results are consistent with the findings of previous years.

The chamber has not taken a position on S. 1891, introduced by Senator John Heinz. Chamber policy does not address most of the bill's provisions, with the exception of raising individual contribution limits mentioned previously. The chamber does support use of reasonable tax credits to encourage voluntary private financing of political campaigns.

The goal of any reform of campaign law should be increased participation in our political process. Campaign financing today is more honest, broad based, and open to public scrutiny than it has ever been in the Nation's history. With full and timely disclosure, other restrictions on the amount and the method of making political contributions and expenditures become unnecessary.

Federal, State, and local elections are too important for people to ignore. Interest groups always have participated in politics, and they will as long as our democracy exists. No group should be restricted just for the sake of reform. The right of millions of citizens to participate more actively in the electoral process by contributing to political action committees, parties, and candidates must be maintained.

Thank you very much, Mr. Chairman.

[The following prepared statement was received for the record:]

### Prepared Statement of the Chamber of Commerce of the United States, by Jon Grunseth

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My philosophy on political action committees has been developed by a variety of personal political experiences over the past fifteen years: currently, I manage Economics Laboratory's political action committee (ELPAC); in 1982, I served as Senator David Durenberger's (R-MN) political action committee chairman in an effort that raised $1.1 million from political action committees; in 1974, I was a candidate for Congress and actively solicited political action committee contributions; and I was an administrative assistant to a member of the House Representatives, who also actively solicited contributions from political action committees.

This broad experience in political fundraising has allowed me to view firsthand all aspects of the debate surrounding the role of political action committees in the political process.

The Chamber supports the continued involvement of political action committees in our political process. Organized political activity is healthy and shows that enough individuals care about what is happening to form a group dedicated to certain goals. It is apparent that political action committees are a very popular instrument for voluntary individual political participation. The continued growth of political action committees gives ample evidence that Americans find them representative of their individual and collective beliefs.

More and more people have become involved in the political process because of these committees. In fact, an estimated 4.5 million individuals voluntarily contribute to committees sponsored by corporations, unions, and trade and professional associations for their employees and/or members. People who give to these committees do so for reasons not unlike those who contribute to such causes as the United Way. The natural inclination is for people not to become involved, and a group provides motivation and a feeling of being able to make a difference. Political action committees have fulfilled this role for millions of individuals who may not otherwise have involved themselves in the very heart of our democratic process—elections. The dollars are the same to a candidate whether an individual contributes directly or through a committee, but a person might not contribute at all if not through a committee.

Several misconceptions about the role of political action committees in the political process have become apparent in public debate. Most revolve around the belief that such committees dominate Congressional campaigns. In each of the last three elections, though, political action committee contributions have accounted for only about one quarter of Congressional candidate receipts. Three quarters of Congressional campaign funds have come from other sources. Whatever the vehicle, we should remember that there is truly only one source of campaign funds—voluntary donations from individuals.

A common misconception about political action committees is that they each contribute hundreds of thousands of dollars to Congressional campaigns. However, according to Federal Election Commission data, 70 percent of the political action committees active in the 1984 elections contributed less than $20,000 each to federal candidates. A survey of corporate employee committees conducted by the U.S. Chamber and other business groups revealed that of the committees in the survey the average contribution to House candidates was only $295 and the average contribution to a Senate candidate was $1,103. These amounts are further evidence that most political action committees do not contribute large amounts or approach the $5,000 per candidate maximum allowed by law—although we support the right of those who wish to do so to contribute the maximum.

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The Chamber is opposed to S. 1806, introduced by Senator David L. Boren (D-OK). This measure is an intrusion into the rights of individuals to participate in the political process through political action committees. By placing a ceiling on the amount candidates may accept from these committees, many will be prevented from contributing to candidates who share their philosophy.

Because of inflation, political donations in 1984 were worth about half of their 1974 value, the year in which the contribution limits were established. Raising the contribution limits for individuals and political action committees to account for inflation is certainly appropriate. Therefore, the Chamber would support raising individual limits as suggested in Senator Boren's bill and oppose lowering the limit on political action committee contributions.

The restrictions on political action committee activity proposed in S. 1806 will encourage such committees to use independent expenditures to support favored candidates, which would give candidates and parties less control over their own campaigns. The Chamber fully supports the First Amendment right of any individual or group to make independent expenditures and merely mentions a possible unintended consequence of the legislation. In addition, any limit on campaign contributions naturally favors incumbents by denying challengers access to crucial funding sources.

Further, the measure would create a procedural nightmare. There is no timely way for political action committees to know whether or not candidates have reached their threshold before making a contribution. Would candidates be required to accept contributions on a "first come" basis? Could candidates accept a contribution from one committee and refund it later so a different committee could contribute? Would political action committee managers be required to defer filing disclosure reports until after receiving notice from the candidate as to whether or not the contribution was accepted (which would hamper full and timely disclosure)?

The requirement in S. 1806 that broadcasters provide so-called "free" response time for independnent expenditures is ill-conceived as well. The goal may be to protect candidates from attacks perceived to be unfair, but this provision also provides free time if an opponent is endorsed through independent expenditures. A candidate who is supported by an independent group or individual via the airwaves by definition has no control over the message or the action. Picture an endorsement by "Drunk Drivers for Smith." Candidate Smith may not want the endorsement but is stuck with it, and then is penalized further by the opponent's receiving free air time to respond.

S. 1806 is a reaction to misconceptions about political action committees, places blame where it does not belong, and is certainly susceptible to numerous unintended consequences. We should remember that candidates are free to impose either the proposed limits of this bill or any other set of personal guidelines without requiring new laws. Candidates are now free to design fundraising activities so that small contributions from their home states are emphasized and political action committee contributions are limited. Several Members of the Congress successfully have done just that. Personal preference does not make necessarily good legislation.

The Chamber also opposes any attempt to impose involuntary taxpayer financing of Congressional elections, such as S. 1787, introduced by Senator Charles McC. Mathias (R-Md.). Taxpayer subsidies of federal elections would dangerously extend the government's role in a traditionally voluntary political process based on individual choice. Citizens should not be forced to support, through their tax dollars, political candidates whose philosophies they may oppose or even support. Contributions should be freely given or freely withheld. In addition, fund raising has traditionally forced candidates to articulate their views in order to gain support and help to determine the pulse and needs of their district or state. Under taxpayer financing, this process would be virtually eliminated.

The public has consistently rejected using general tax revenues to support Congressional candidates. A poll conducted this year by Civic Service, Inc. found that 70.6 percent of the public opposed taxpayer financing of Congressional elections. Seventy-three percent of those surveyed also opposed the current system of financing Presidential elections. This poll has been conducted annually since 1977, and this year's results are consistent with the findings of previous years.

The Chamber has not taken a position on S. 1891, introduced by Senator John Heinz (R-PA). Chamber policy does not address most of the bill's provisions, with the exception of raising individual contribution limits mentioned previously. The Chamber does support use of reasonable tax credits to encourage voluntary private financing of political campaigns.

The goal of any reform of campaign law should be increased participation in our political process. Campaign financing today is more honest, broadbased, and open to public scrutiny than it has ever been in the nation's history. With full and timely disclosure, other restrictions on the amount and the method of making political contributions and expenditures become unnecessary.

Federal, state, and local elections are too important for people to ignore. Interest groups always have participated in politics, and they will as long as our democracy exists. No group should be restricted just for the sake of reform. The right of millions of citizens to participate more actively in the electoral process by contributing to political action committees, parties, and candidates must be maintained.

The CHAIRMAN. Thank you, Mr. Grunseth. In your testimony, you refer to the civic service poll on public finance. Polls don't seem to be entirely in agreement on the subject, and, if there is no objection, I will include in the record at this point a Gallup poll of July 1984 in which this question was asked: It has been suggested that the Federal Government provide a fixed amount of money for the election campaigns of candidates for Congress, and that all private contributions from other sources be prohibited.

Then the question is: Do you think this is a good idea or a poor idea?

Fifty-eight percent of the respondents in that Gallup poll said they felt it was a good idea; 29 percent said it was a bad idea; and 13 percent said they had no opinion on the subject.

So that's one piece of evidence to indicate that there is some public support for the concept of public financing.

[The material referred to above follows:]

## THE GALLUP POLL

### MAJORITY WANTS FEDERAL GOVERNMENT TO FUND CONGRESSIONAL CAMPAIGNS

(By George Gallup)

[(c) 1984, Los Angeles Times Syndicate]

PRINCETON, NJ.—With spending for this year's U.S. House and Senate election campaigns expected to top previous records, it is noteworthy that a majority of Americans would like to see the federal government provide a fixed amount of money to fund the campaigns of congressional candidates, prohibiting contributions from all other sources.

The latest Gallup Poll shows 52 percent supporting this plan and 36 percent opposed, consistent with the findings of Gallup surveys conducted for over a decade.

The Federal Election Commission reported that during the 1981-82 political season candidates for the House and Senate spent almost $350 million in trying to get elected, the most in history and 44 percent over campaign spending in 1979-80. Political action committees (PACs) contributed more than $80 million to the 1982 campaigns, up 50 percent from two years earlier. Under the terms of the proposal reported today, PAC contributions would be barred.

Here is the question and the trend:

"It has been suggested that the federal government provide a fixed amount of money for the election campaigns of candidates for Congress and that all private contributions from other sources be prohibited. Do you think this is a good idea or a poor idea?"

GOVERNMENT FUNDING OF CONGRESSIONAL CAMPAIGNS

[Percent]

| | Good idea | Poor idea | No opinion |
|---|---|---|---|
| July 6–9 | 52 | 36 | 12 |
| 1982 | 55 | 31 | 14 |
| 1979 | 57 | 30 | 13 |
| 1977 | 57 | 32 | 11 |
| 1973 | | | |
| Sept | 65 | 24 | 11 |
| June | 58 | 29 | 13 |

As shown above, the latest findings represent some loss in public support from earlier levels. In 1982, Republicans and Democrats shared the same beliefs about the proposed election reform. As the table below reveals, the loss in support from 1982 to 1984 traces to defection on the part of Republicans and Independents, while Democratic backing currently is as strong as it was two years ago.

Following is a comparison of the 1984 and 1982 surveys based on political affiliation, with "no opinions" omitted:

GOVERNMENT FUNDING OF CONGRESSIONAL CAMPAIGNS

[Percent]

| | Good idea | | Poor idea | |
|---|---|---|---|---|
| | 1984 | 1982 | 1984 | 1982 |
| National | 52 | 55 | 36 | 31 |
| Republicans | 45 | 54 | 43 | 33 |

GOVERNMENT FUNDING OF CONGRESSIONAL CAMPAIGNS—Continued

[Percent]

| | Good idea | | Poor idea | |
|---|---|---|---|---|
| | 1984 | 1982 | 1984 | 1982 |
| Democrats | 56 | 54 | 32 | 34 |
| Independents | 54 | 61 | 34 | 26 |

The latest findings are based on in-person interviews with 1,523 adults, 18 and older, conducted in more than 300 scientifically selected localities across the nation during the period July 6-9.

For results based on samples of this size, one can say with 95 percent confidence that the error attributable to sampling and other random effects could be 3 percentage points in either direction.

(c) 1984, Los Angeles Times Syndicate

The CHAIRMAN. Let me ask you this question. Is there any relationship in your mind between a political contribution and the kind of service a public servant performs?

Mr. GRUNSETH. Do PAC dollars buy votes, in other words?

The CHAIRMAN. Yes.

Mr. GRUNSETH. I have run into individuals that think they do, but my broad experience has shown—and I think the experience of most of us who have been involved in political fundraising—that they don't.

I clearly have never personally run into a Member who thinks they do. But there are some individuals who think it does have an impact, no doubt about it.

The CHAIRMAN. Of course, Mr. Green was just quoting Boies Penrose as a very candid Member of the Senate. I think it would take more candor than any Senator I have ever known would have to admit that he had been bought. So I think you can't expect that very many Members of Congress are going to say that their votes are affected by contributions.

Many Members of Congress will say that access is affected by contributions, that they find it difficult to turn down a phone call or a visit from someone whom they know is a large contributor.

I have never heard any go so far as to say that they felt they had made a decision on a public issue as a result of a contribution.

But the perception on the part of some contributors is that they are getting something in the way of sympathy.

Mr. GRUNSETH. I think that there is some of that around, and I think that's naive. In my judgment, most of the men and women who serve in the Congress come here with a philosophy, with a notion about how they are going to proceed on public policy, and you generally end up tending to back an individual who already tends to support your general philosophy.

The CHAIRMAN. Let me turn to Senator Simon and ask him not only if he has any questions, but if at this point he would assume the chair.

Senator SIMON [presiding]. I will, though I will have to leave by 12:30.

I have just one question, and that is, back in the recesses of your mind, is there even one scintilla of concern about the impact that money is having on elections in this country?

Mr. GRUNSETH. Not that that outweighs what I see have been some real advantages to political action committees. We should be celebrating. Back in 1974 I doubt seriously if we had 200,000 people contributing through political action committees in this country. We have 4.5 million people today that have chosen freely and on a voluntary basis to become involved in the political process. They are better informed and better educated for that effort.

So, on balance, I would have to say that this is cause for celebration. This has had a very positive impact on the American public and on the electorate vis-a-vis the fact that we have a better informed citizenry out here now.

Senator SIMON. I thank you. Our final witness, Mr. Reed Larson, president of the National Right to Work Committee. And I don't mean to cut you short, Mr. Larson, but I have some people who have been waiting and I told them that I would not keep them waiting more than one-half hour, so I should be there at 12:30.

Mr. LARSON. Well, Senator, I appreciate the constraints on your time, and certainly on mine, too, and I will be as brief as I can. I have some material to put before the committee which I think is very important.

Senator SIMON. We will enter your full statement in the record.

Mr. LARSON. Because of your request for extra brevity, what I will do, I think, rather than reading my statement, which has a number of points that need to be emphasized, I will I think read the text of a letter that I sent to the Senate on this subject last December. In a few sentences, it summarizes the essence of our concern, not only about Senator Boren's amendment, which was the subject of that letter, but all the other measures regarding the political action committee reform, so-called, that are in your committee, except Senator Helms' bill, S. 1563.

Let me just read this brief letter and then call attention to a couple of points that need to be emphasized. Also I wanted to mention that I will submit for the record, in addition to that testimony, a collection of published reports that illustrate the problem that we are concerned about and which we think the committee should be most concerned about.

Senator Boren's amendment is seriously defective in that it completely ignores the most grave of all political campaign abuses, the widespread use of compulsory union dues for union PAC fundraising and a broad range of political activities through what is called "soft money." The proposed amendment, by further restricting participation of citizens in the electoral process, through voluntary contributions, while leaving untouched the misuse of compulsory dues for politics, would exacerbate the already existing imbalance which results from forced dues politicking.

Except for union PAC's, every dollar spent in the campaign arena, both for fundraising and for campaign contributions, comes from voluntary contributions, but union officials are free to spend tens of millions of dollars in compulsory dues, not only for campaign support activity but also for the cost of operating union PAC's and raising the so-called hard money that they dispense.

So any restriction on voluntary PAC activity like that contemplated by the Boren amendment, which does nothing to curb the abuses of compulsory dues for politics, only makes a bad situation worse.

And I just want to call your attention to a couple of factors. First, let me say that nothing in the whole arena of campaign reform more urgently needs to be addressed than the corruption which grows out of forcing millions of people throughout this country to pay money as a condition of employment and then have their money taken to be used to elect politicians that they oppose. This is a most basic violation of individual and civil rights, and it goes on on a widespread basis.

And there is a lot of debate about what is the extent of the use of union dues for politics. There is no way to find out—it's hidden, it's all secret, there is no reporting requirement. It goes into staff time, it goes into mailings, it goes into all kinds of things that never find their way onto the reporting records.

In these published reports I am submitting, there are a number of examples that help to illustrate the scope of the problem. The estimates range from a few million dollars up to a couple of hundred million—and I think probably the $200 million is very close to the accurate figure of the amount of union dues that go into political activity, much of it opposed by the very people that are forced to pay the dues.

But one good example was in the 1984 campaign when your colleague, Senator John Glenn, was campaigning for the presidency. He said that about $15 to $20 million of union dues money was going into political activity to oppose him. This was dismissed as ridiculous by a union spokesman, but later Paul Jensen, Mondale's labor coordinator, admitted that $20 million was just about exactly what went into that campaign. That's dues money.

And that's just one part of one campaign. So you multiply that by any reasonable projection, I think it's $200 million that are taken away from Americans on pain of losing their job and poured into political activity. And if this committee does anything on the question of reforming our election laws, and doesn't do anything about the misuse of compulsory dues for politics, it is an outrage.

Mr. Chairman, I appreciate the chance to be here, and I'd be glad to answer any questions.

[The prepared statement of Mr. Larson follows:]

### PREPARED STATEMENT BY REED E. LARSON, PRESIDENT, THE NATIONAL RIGHT TO WORK COMMITTEE

Mr. Chairman, members of the committee:

Since proposed reforms of our federal election law first became popular over a decade ago, the National Right to Work Committee has strongly opposed any federal election law amendments that would clamp restrictions on voluntary participation in the electoral process. Furthermore we have strongly urged adoption of protections in federal election law against the most corrupting campaign influence of all—the expenditure of compulsory union dues for political purposes.

Unfortunately none of the proposed reforms pending before this Committee—with one exception, Senator Helms' S. 1563—meets these standards of protecting voluntary political participation. In fact, should any of these proposals become law, the existing imbalance in our election laws will only become worse.

I think the problem stems from a false assumption that all special interest groups make their contributions to political candidates and causes in the same way—through direct cash contributions. However, the great bulk of Big Labor's partisan political spending comes in the form of compulsory dues dollars spent on in-kind political services.

A second false assumption holding sway in Congress is that the Federal Election Campaign Act, as amended in 1976, treats all participants in the political process equally. In reality, our federal election law confers special advantages upon one special interest group—the political operatives of Big Labor—at the expense of everybody else participating in the electoral process.

The unique power of which I am speaking is the ability of organized labor to collect compulsory dues from workers and to spend those dues on political campaigns of candidates those workers may oppose.

Let me interject at this point that these compulsory dues payers are not analogous to shareholders in corporations. The United States Court of Appeals has shattered this bogus argument in *FEC* v. *International Association of Machinists.* Union attorneys asked the Court to decide whether the use of corporate assets to fund political action violates the First Amendment rights of dissenting shareholders. The Appeals Court ruled there is no valid analogy, stating that a corporate shareholder "invests in a corporation of his own volition and is free to withdraw that investment."

The FECA does prohibit the use of compulsory dues for direct cash contributions to political candidates. This gives the law the appearance of restricting the use of compulsory dues for political purposes. However, the FECA does not prohibit the use of forced union dues for a number of other indirect means of supporting union political candidates and causes.

The FECA specifically permits union officials to use money taken from workers as a condition of employment to communicate with union members and their families urging their support for a particular candidate, to conduct supposedly "nonpartisan" get-out-the-vote drives, and to operate and administer their sophisticated and expensive union PACs.

In short, the law prohibits union officials from giving a worker's dollars directly to a candidate whom the worker may oppose, but a substantial part of the cost of raising funds is paid with forced dues. At the same time, the Act permits union officials to use the worker's compulsory dues dollars to support that same candidate through numerous indirect means. In light of this dichotomy, union officials have turned to "soft" contributions to candidates.

"Soft" money consists of money spent by union officials on behalf of their favorite candidates through various indirect means. A large part of this soft money comes directly from compulsory union dues. It finances the operations of the union PACs and it provides massive in-kind political services. And unlike other campaign contributions, it is not documented or reported to the Federal Election Commission.

One area in which this "soft" money can be used, as I mentioned before, is in financing the union PACs. These expenditures run well into the millions of dollars every year covering staff expenses, the expense of mailings to raise the cash for direct contributions, as well as other overhead.

Except for the union PACs, every dollar spent in the campaign arena—both for fund-raising and for campaign contributions is voluntary. On the other hand, union officials are free to spend unlimited amounts of compulsory dues money, not only for campaign support activities, but also for the cost of operating union PACs and raising the hard money they dispense.

As large as the problem of compulsory-union-dues-supporting-union-PACs is, it pales in comparison to other expenditures of compulsory dues for politics.

The July 1979 issue of *Steelabor* put it best by offering its readers an explanation of in-kind political spending. Union dues money, reported the union paper, "can't go for direct political contributions—but it can do a lot. Mailings supporting or opposing political candidates, phone banks, precinct visits, voter registration and get-out-the-vote drives . . ."

*Steelabor's* account, though enlightening, is far from thorough. To complete the picture, several key expenditures need to be added to the list: weeks, sometimes months of the staff time of thousands of union employees devoted almost solely to partisan politics, hordes of election day workers paid from compulsory dues, millions of political pamphlets and flyers, and paid election day carpools and babysitters, to name a few.

During the 1984 Democratic presidential primary, these vast resources were poured into the campaign efforts of Walter Mondale. Primary opponent John Glenn pegged the value of the AFL-CIO's political assistance to Mr. Mondale at $15 to $20 million. Paul Jensen, Mondale's liaison with union officials, recently confirmed the $20 million figure.

A few years ago, noted labor columnist Victor Riesel put the value of union political spending at over $100 million per election cycle. In the March 1986 issue of the *National Journal,* Rachelle Horowitz, political director of the American Federation of Teachers, is quoted as saying the amount spent by local unions on politics is "mind-boggling."

Again, these in-kind expenditures are not subject to any limitations under the FECA. They come directly from compulsory union dues, and they represent the overwhelming bulk of union political expenditures. They are the single most corrupting influence on our electoral process today.

Fortunately, the federal courts have made some progress in remedying the abuse of workers' compulsory dues for political purposes. Building upon earlier decisions in the *Abood* and *Ellis/Fails* cases, the Supreme Court has consistently ruled that the expenditure of compulsory union dues for political, non-collective bargaining purposes violates the First Amendment rights of dissenting employees. The Supreme Court in *Chicago Teachers Union* v. *Hudson* ruled unanimously that public employee unions must set up strict safeguards to insure that no money collected from dissenting employees is used to support political or ideological activities.

Unfortunately these major victories in the court systems are still inadequate in protecting the rights of compulsory union dues payers. The current legal status requires under-financed workers to face an army of union attorneys through long and costly litigation. And, because most of the compulsory union dues are spent on unreported and undisclosed in-kind contributions to political candidates, the abuse of the worker's constitutional rights is often hard to track.

Any meaningful campaign reform proposal must deal with the menace of compulsory union dues for political purposes. It must return to individual workers the right to choose for themselves which political candidates and causes their dollar will be used to support. The legislation under consideration by this committee—with one exception, as I noted earlier—clamps even tighter restrictions on voluntary political participation, while totally ignoring the immense problem of forced dues for politics.

Any restriction on voluntary political activity, which does nothing to curb the abuses of compulsory dues for politics, only make a bad situation worse. By further restricting voluntary participation of citizens in the electoral process, while leaving untouched the misuse of compulsory dues for politics, the pending legislation would exacerbate the already existing imbalance which results from the unique power of union officials to collect forced dues and spend them on the pet political candidates of union officials.

Senator Mathias, members of the Committee, I strongly urge you to incorporate in any campaign reform measure reported by this Committee, the protections against the abuse of compulsory union dues for political purposes contained in Senator Helms' S. 1563. S. 1563 would not affect the rights of union members to voluntarily support candidates or causes. Also, S. 1563 would benefit all participants in the electoral process by insuring that the political operatives of Big Labor play on a level playing field with everybody else. Even more important, S. 1563 would address the most pressing and corrupt campaign practice of all—the unconstitutional abuse of dues, taken from workers as a condition of employment, for political purposes they opppose.

Attached are a number of articles on this topic which I ask to be inserted in the record of this hearing.

Attachments.

(Articles submitted for the record are on file with the Committee.)

Senator SIMON. I thank you. I don't think there is any question that there have been some abuses in unions.

Let me ask you this. Have you ever heard of a chief executive officer of a company saying to other officers in the company: we have this PAC and it would be greatly appreciated if you contribute to this PAC?

Mr. LARSON. I've heard a lot about that and I don't doubt that it goes on. And I'm glad you brought that up, because that's covered in my testimony. The defenders of forced-dues politicking often cite the so-called parallel with corporate campaigns—and they took that issue to court a couple of years ago and a case was decided in the U.S. Court of Appeals. And the U.S. Court of Appeals said that investors in a corporation are not analogous to compulsory dues payers, that investors in a corporation invest voluntarily—they can dispose of their investment anytime they want, if they dislike what a corporation is doing, and they are not penalized with the loss of their livelihood.

So there is no parallel to the use of compulsory dues for politics. This is wrong and it is very corrupting.

Senator SIMON. We thank you for your testimony, we thank all the witnesses.

The hearing stands adjourned.

[The committee adjourned at 12:23 p.m.]

[The following articles were received to be included in the record:]

# APPENDIXES

## APPENDIX 1A

99TH CONGRESS
1ST SESSION

# S. 59

To amend the Federal Election Campaign Act of 1971 to limit excessive expenditures and to provide for more timely and complete public reporting of campaign gifts and spending.

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IN THE SENATE OF THE UNITED STATES

JANUARY 3, 1985

Mr. GOLDWATER introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

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# A BILL

To amend the Federal Election Campaign Act of 1971 to limit excessive expenditures and to provide for more timely and complete public reporting of campaign gifts and spending.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Federal Election Campaign Expenditure Limits Act".

FINDINGS AND DECLARATIONS

SEC. 2. The Congress finds and declares that—

(1) campaign spending by congressional candidates directly increased to an estimated $400,000,000 in 1983–1984, more than triple the $125,500,000 spent

in the 1976 elections, the period of the United States Supreme Court decision in Buckley against Valeo;

(2) campaign spending by all sources in Presidential elections increased from $160,000,000 in 1976 to an estimated $325,000,000 in 1984, a rise of more than double;

(3) political action committee contributions to congressional campaigns increased from $22,600,000 in the 1976 elections to more than $104,000,000 in the 1984 elections, almost five times the earlier amount;

(4) independent campaign spending by political action committees and other associations and individuals, to influence election results in Federal campaigns amounted to more than $17,000,000 in the 1984 elections;

(5) total spending by political action committees at the Federal level rose from $53,000,000 in the 1976 elections to an estimated $270,000,000 in the 1984 elections, a rise exceeding 500 per centum;

(6) all campaign spending in the 1984 Presidential and congressional elections totaled $900,000,000 compared with a total of $300,000,000 spent in 1976, triple the earlier amount;

(7) the sharp increase in the amount and nature of excessive campaign spending in Federal elections poses

a danger of real or perceived corruption among candidates for Federal offices and elected Federal officials and thereby discourages and reduces full voting participation by all citizens in Federal elections;

(8) the burden on elected Federal officials of soliciting campaign funds and attending or participating in campaign fundraising activities interferes with and adversely affects the performance of their official duties;

(9) the ability of candidates, parties, and individuals or independent associations and committees to communicate their political expressions and views is not dependent on making unlimited expenditures for political advertising, direct mail appeals, polls, and other political services;

(10) the establishment of limitations on total campaign spending in Federal elections by candidates, parties, individuals or independent associations, which allow a reasonable amount and diversity of political expenditures, will not unduly restrain the quantity and diversity of political expression and speech;

(11) excessive campaign expenditures endanger the integrity and stability of the election process and the successful functioning of self-rule by the people under the Constitution;

(12) the interest of political expression must be balanced against other compelling and legitimate governmental interests; and

(13)(A) it is therefore necessary and proper to enact comprehensive campaign spending limitations in Federal elections and to limit the length of Presidential campaigns in order to accomplish the compelling interests of Congress in—

(i) securing the stability of the political system;

(ii) furthering the full participation of all voting age citizens in Federal elections;

(iii) protecting against corruption in the political system;

(iv) furthering the effective performance of their duties by elected Federal officials; and

(v) carrying out its duty to "secure the blessings of liberty" to the people; and

(B) there is no alternative which will adequately accomplish these purposes.

FUNDRAISING INCLUDED IN CEILINGS

SEC. 3. Section 301(9)(B) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(9)(B)) is amended—

(1) by striking out clause (vi), relative to fundraising amounts; and

(2) by redesignating clauses (vii) through (x) as clauses (vi) through (ix), respectively.

ADDITIONAL REPORTING REQUIREMENTS

SEC. 4. (a)(1) Section 301(9)(B)(iii) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 (9)(B)(iii)) is amended by striking out "(ii)" and inserting in lieu thereof "(iii)";

(2) Section 301 is further amended by adding at the end thereof the following:

"(20) The term 'address' means—

"(A) for an individual, the voting domicile of such individual, or

"(B) for a political committee, the principal place of business of such committee.".

(b) Section 304(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(a)) is amended—

(1) in subparagraph (2)(A) by—

(A) redesignating clauses (ii) and (iii) as clauses (iii) and (iv), respectively; and

(B) inserting after clause (i) the following:

"(ii) an additional pre-election report which shall be filed no later than the fifth day before (or posted by registered or certified mail no later than the eighth day before) any election, or nomination for election, and which shall be complete as of the tenth day before such election;";

(2) in paragraph (3)(A) by—

(A) striking out "a pre-election report shall be filed in accordance with paragraph (2)(A)(i)" in clause (i) and inserting in lieu thereof "pre-election reports shall be filed in accordance with clauses (i) and (ii) of paragraph (2)(A)";

(B) striking out "(2)(A)(ii)" in clause (i) and inserting in lieu thereof "(2)(A)(iii)";

(C) striking out "a pre-election report or reports" in clause (ii) and inserting in lieu thereof "pre-election reports";

(D) striking out "paragraph (2)(A)(i)" in clause (ii) and inserting in lieu thereof "clauses (i) and (ii) of paragraph (2)(A)";

(E) striking out "(2)(A)(ii)" in clause (ii) and inserting in lieu thereof "(2)(A)(iii)"; and

(F) striking out "(2)(A)(iii)" in clause (ii) and inserting in lieu thereof "(2)(A)(iv)";

(3) in paragraph (4)(A) by—

(A) redesignating clauses (iii) and (iv) as clauses (iv) and (v), respectively; and

(B) inserting after clause (ii) the following:

"(iii) an additional pre-election report which shall be filed no later than the fifth day before (or posted by registered or certified mail no later than the eighth day before) any election, or nomination for election, and which shall be complete as of the tenth day before such election;";

(4) in paragraph (4)(B) by—

(A) striking out "a pre-general election report" in subparagraph (B) and inserting in lieu thereof "pre-general election reports";

(B) striking out "paragraph (2)(A)(i)" and inserting in lieu thereof "clauses (i) and (ii) of paragraph (2)(A)"; and

(C) striking out "(2)(A)(ii)" and inserting in lieu thereof "(2)(A)(iii)";

(5) in paragraph (5) by striking out "paragraph (2)(A)(i) or (4)(A)(ii)" and inserting in lieu thereof "clause (i) or (ii) of paragraph (2)(A) or clause (ii) or (iii) of paragraph (4)(A)";

(6) in paragraph (6)(A) by—

(A) striking out "$1,000" and inserting in lieu thereof "$500"; and

(B) striking out "20th" and inserting in lieu thereof "tenth".

(7) in paragraph (8) by—

(A) striking out "(2)(A)(iii)" and inserting in lieu thereof "(2)(A)(iv)"; and

(B) striking out "a pre-election report under paragraph (2)(A)(i) or paragraph (4)(A)(ii)" and inserting in lieu thereof "pre-election reports under clauses (i) and (ii) of paragraph (2)(A) or clauses (ii) and (iii) of paragraph (4)(A)"; and

(8) in paragraph (9) by striking out the second sentence.

(c) Section 304(b)(4)(A) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(b)(4)(A)) is amended by adding before the semicolon at the end thereof the following: "setting forth such expenses in specific categories including, but not limited to, categories for such expenses as consultants, media time, political polling, and direct mail communications".

(d) Section 304(c)(2) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(c)(2)) is amended by—

(1) striking out "$1,000" and inserting in lieu thereof "$500"; and

(2) striking out "20th" and inserting in lieu thereof "tenth".

(e) Section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434) is amended by adding at the end thereof the following:

"(d) All political committees required to file reports or statements pursuant to this section shall, at the time any such report or statement is filed, in addition to the other locations at which such reports or statements are made available, make all such reports and statements available to the public at the campaign headquarters or their principle place of business of such committee. The reports and statements at such location shall be available to the public and, upon request, shall be furnished to a member of the public for the actual cost of duplication of such material.

"(e) When any political committees make any communication in connection with the solicitation of contributions, such communication shall include information identifying the organizers and officers of such committee and all organizations, and if such committee is associated with, or operating in cooperation, or concert with any other committee, association or organization, information identifying all such entities.".

(f) Section 309(b) of the Federal Election Campaign Act of 1971 (2 U.S.C. 437g) is amended by striking out "(iii)" and inserting in lieu thereof "(iv)".

### LENGTH OF PRESIDENTIAL CAMPAIGNS

SEC. 5. (a) Section 305 of the Federal Election Campaign Act of 1971 (2 U.S.C. 437) is amended by—

(1) inserting "(a)" before "Each committee"; and

(2) adding at the end thereof the following:

"(b) No convention by any party held to nominate a candidate for the office of President or Vice President shall be held before the first Monday in September of the calendar year in which the election for such office is to be held.".

(b) Section 315 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a) is amended by adding at the end thereof the following:

"(i) No candidate for the office of President or Vice President, or for the nomination of any party for such office, nor the authorized committees of any such candidate, nor any person may make any expenditures or incur any costs in connection with the solicitation of contributions on behalf of such candidate for the general election before June 1 of the calendar year of the election in which such individual is a candidate. The amount of any such expenditure shall be added to all other expenditures made by any such candidate for purposes of subsection (b)(1)(B) of this section, and shall not exceed the limitations set forth in such subsection.".

### EXPENDITURE LIMITS

SEC. 6. (a) Section 315 (b) (1) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a (b) (1)) is amended—

(1) by amending subparagraph (A) to read as follows:

"(A) $15,000,000 in the case of a campaign for nomination for election to such office;" and

(2) in subparagraph (B) by striking out "$20,000,000" and inserting in lieu thereof "$25,000,000".

(b) Section 315 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a) is amended by—

(1) repealing subsection (c), relative to price index increases;

(2) redesignating subsections (d) through (h) as subsections (c) through (g), respectively; and

(3) striking out "(e)" each place it appears in subsection (c) as redesignated and inserting in lieu thereof "(d)".

(c) Section 315 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a) as amended by this Act is further amended by adding at the end thereof the following:

"(j)(1) A candidate for the office of Senator of the United States shall not make expenditures—

"(A) in any primary election in excess of the larger of—

"(i) 12 cents multiplied by the voting age population, as certified under subsection (e), of the State in which such election is held; or

"(ii) $150,000; and

"(B) in any general election in excess of the larger of—

"(i) 22 cents multiplied by the voting age population, as certified under subsection (e), of the State in which such election is held; or

"(ii) $250,000.

"(2)(A) Except as otherwise provided in this paragraph, a candidate for the office of Representative in, or Delegate or Resident Commissioner to, the Congress shall not make expenditures in excess of $100,000 in any primary or general election.

"(B) For a candidate for the office of Representative for a State entitled to only one Representative, the limitations on expenditures applied to Senators, pursuant to paragraph (1) shall be applied to such Representative in lieu of the limitation applied by this paragraph.

"(k)(1) A candidate in an election for the office of President, may make expenditures from his personal funds, or the personal funds of his immediate family, in connection with his campaign for election to the office of President up to an amount which, when added to all other expenditures made by such candidate during the calendar year in which such election is held, does not exceed the expenditure limits provided in subsection (b) (1). For purposes of this paragraph, expenditures from personal funds made by a candidate for the office of Vice President shall be considered to be expenditures by such candidate for the office of President.

"(2) A candidate of a party in an election for the office of Senator or Representative in, or Delegate or Resident Commissioner to the Congress of the United States may make expenditures from his personal funds, or the personal funds of his immediate family, in connection with his campaign for election to such office up to an amount which, when added to all other expenditures made by such candidate during the calendar year in which such election is held, does not exceed the expenditure limits provided in subsection (j).

"(l)(1) For purposes of this section expenditures made on behalf of any candidate or by any person including a member of the immediate family of such candidate for the office of Senator or for the office of Representative in, or Delegate or Resident Commissioner to, the Congress of the United States shall be considered to be expenditures made by such candidate.

"(2) For purposes of this subsection, 'immediate family' means a candidate's spouse, and any child, parent, grandparent, brother, half-brother, sister, or half-sister of the candidate, and the spouses of such individuals, and any child, parent, grandparent, brother, half-brother, sister, or half-sister of the candidate's spouse, and the spouses of such individuals.".

### LIMITATIONS ON INDEPENDENT EXPENDITURES

SEC. 7. Section 315 of the Federal Election Campaign Act of 1971, as amended by section 6 of this Act, is further amended by adding at the end thereof the following:

"(n) No person may make any independent expenditure on behalf of or with respect to a clearly identified candidate, advocating the election or defeat of such candidate during a calendar year which, when added to all other independent expenditures made by such person on behalf of or with respect to such candidate during the calendar year in which such election is held advocating the election or defeat of such candidate exceeds $5,000.".

### TECHNICALS

SEC. 8. (a) Section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431) is amended—

(1) in paragraph (8)(B)(ix) by striking out "or chapter 95 or chapter 96 of the Internal Revenue Code of 1954";

(2) in paragraph (9)(B)(vii)(II) by striking out "or chapter 95 or chapter 96 of the Internal Revenue Code of 1954"; and

(3) by adding at the end thereof the following:

"(21) The term 'major party' means with respect to any presidential election, a political party whose candidate for the office of President in the preceding Presidential election received, as the candidate of such party, 25 per centum or more of the total number of popular votes received by all candidates for such office.

"(22) The term 'minor party' means, with respect to any Presidential election, a political party whose candidate for the office of President in the preceding Presidential election received, as the candidate of such party, 5 per centum or more, but less than 25 per centum of the total number of popular votes received by all candidates for such office.

"(23) The term 'new party' means with respect to any Presidential election, a political party which is neither a major party nor a minor party.

"(24) The term 'Presidential election' means the election of Presidential and Vice-Presidential electors.".

(b) Section 302(h) of the Federal Election Campaign Act of 1971 (2 U.S.C 432(h)) is amended by striking out "or chapter 95 or chapter 96 of the Internal Revenue Code of 1954".

(c) Section 304(b) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(b)) is amended by—

(1) inserting "and" at the end of subparagraph (I);

(2) striking out "; and" at the end of subparagraph (J) and inserting in lieu thereof a period; and

(3) striking out subparagraph (K).

(d) Section 306 of the Federal Election Campaign Act of 1971 (2 U.S.C. 437c) is amended—

(1) in subsection (b) by striking out "and chapter 95 and chapter 96 of the Internal Revenue Code of 1954"; and

(2) in subsection (c) by striking out "or with chapter 95 or chapter 96 of the Internal Revenue Code of 1954".

(e) Section 307(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 437d) is amended—

(1) in paragraph (6) by striking out "and chapter 95 and chapter 96 of the Internal Revenue Code of 1954,"; and

(2) in paragraph (8) by striking out "and chapter 95 and chapter 96 of the Internal Revenue Code of 1954".

(f) Section 308 of the Federal Election Campaign Act of 1971 (2 U.S.C. 437f) is amended—

(1) in subsection (a) (1) by striking out "chapter 95 or chapter 96 of the Internal Revenue Code of 1954,";

(2) in subsection (b) by striking out "or in chapter 95 or chapter 96 of the Internal Revenue Code of 1954"; and

(3) in subsection (c)(2) by striking out "or by chapter 95 or chapter 96 of the Internal Revenue Code of 1954".

(g) Section 309(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 437g) is amended—

(1) in paragraph (1) by striking out "or of chapter 95 or chapter 96 of the Internal Revenue Code of 1954";

(2) in paragraph (2) by striking out "or chapter 95 or chapter 96 of the Internal Revenue Code of 1954";

(3) in paragraph (4)(A)(i) by striking out "or of chapter 95 or chapter 96 of the Internal Revenue Code of 1954";

(4) in paragraph (4)(A)(ii) by striking out "or chapter 95 or chapter 96 of the Internal Revenue Code of 1954";

(5) in subparagraphs (A) and (B) of paragraph (5) by striking out "or of chapter 95 or chapter 96 of the Internal Revenue Code of 1954" each place it appears;

(6) in paragraph 5(C) by striking out "or a knowing and willful violation of chapter 95 or chapter 96 of the Internal Revenue Code of 1954,";

(7) in subparagraphs (A) and (C) of paragraph (6) by striking out "or of chapter 95 or chapter 96 of the

Internal Revenue Code of 1954" each place it appears; and

(8) in paragraph (6)(B) by striking out "or chapter 95 or chapter 96 of the Internal Revenue Code of 1954".

(h) Section 309(d) of the Federal Election Campaign Act of 1971 (2 U.S.C. 437g(d)) is amended by striking out "or of chapter 95 or chapter 96 of title 26" each place it appears in paragraphs (2) and (3).

(i) Section 311 of the Federal Election Campaign Act of 1971 (2 U.S.C. 438) is amended—

(1) in subsection (b) by striking out the second sentence; and

(2) in subsection (e) by striking out "or by chapter 95 or chapter 96 of the Internal Revenue Code of 1954".

(j) Section 314 of the Federal Election Campaign Act of 1971 (2 U.S.C. 439c) is amended by striking out "and under chapters 95 and 96 of the Internal Revenue Code of 1954,".

(k) Section 315 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a) is amended in subsection (a)(5)(C) by—

(1) inserting "and" at the end of clause (i);

(2) striking out "; and" at the end of clause (ii) and inserting in lieu thereof a period; and

(3) striking out clause (iii).

(l) Section 315(b)(1) of the Federal Election Campaign Act of 1971 (2 U.S.C. 411a(b)(1)) is amended by striking out all the material beginning with "who is eligible" through "Secretary of the Treasury".

### REPEAL OF PUBLIC FINANCING PROVISIONS

SEC. 9. Chapter 95 of the Internal Revenue Code of 1954, the Presidential Election Campaign Fund Act (26 U.S.C. 9001 et seq.), and chapter 96 of such Code, the Presidential Primary Matching Payment Account Act (26 U.S.C. 9031 et seq.) and all references to such chapters are repealed.

### EFFECTIVE DATE

SEC. 10. This Act and the amendments made by this Act shall apply to all campaigns for election to Federal offices for which the election is held after January 1, 1985.

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## APPENDIX 1B

II

99TH CONGRESS
1ST SESSION

# S. 1072

To amend the Federal Election Campaign Act of 1971 to increase individual and party participation, to provide for the adjustment of contribution limits, and to allow candidates to control expenditures made on their behalf.

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IN THE SENATE OF THE UNITED STATES

MAY 6 (legislative day, APRIL 15), 1985

Mr. GORTON introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

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# A BILL

To amend the Federal Election Campaign Act of 1971 to increase individual and party participation, to provide for the adjustment of contribution limits, and to allow candidates to control expenditures made on their behalf.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Federal Election Reform Act of 1985".

### INDEXING INDIVIDUAL AND MULTICANDIDATE COMMITTEE CONTRIBUTION LIMITS

SEC. 2. Section 315(c) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(c)) is amended in paragraph (1) by striking out all following "established by" through "and subsection (d)" and inserting in lieu thereof "subsections (a), (b) and (d)".

INCREASING PARTY CONTRIBUTION LIMITS

SEC. 3. (a) Section 315(d)(3) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(d)(3)) is amended—

(1) in subparagraph (A)(i) by striking out "2" and inserting in lieu thereof "6";

(2) in subparagraph (A)(ii) by striking out "$20,000" and inserting in lieu thereof "$60,000"; and

(3) in subparagraph (B) by striking out "$10,000" and inserting in lieu thereof "$30,000".

(b) Section 315(h) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(h)) is amended by striking out "$17,500" and inserting in lieu thereof "$52,500".

CONDITIONS FOR ADJUSTING CONTRIBUTION LIMITS

SEC. 4. Section 315(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)) is amended by adding at the end thereof the following new paragraph:

"(9)(A) The limitations provided in paragraphs (1)(A) and (2)(A) of this subsection shall be trebled in amount with respect to persons or multicandidate committees making contributions to any candidate and his authorized committees in an election—

"(i) for the office of Senator in which a candidate for such office makes contributions to his campaign from his personal funds in excess of:

"(I) $50,000 in a State with one or two congressional districts; or

"(II) $100,000 in a State with three or more congressional districts; or

"(ii) for the office of Representative in, or Delegate or Resident Commissioner to, the Congress, the candidate makes contributions to his own campaign from his personal funds in excess of $50,000;

"(B) the increase in contribution limitations described in subparagraph (A) shall not apply to persons or multicandidate committees making contributions to any candidate and his authorized committees where such candidate has made contributions to his campaign from his personal funds in excess of the amounts described in clause (i) or (ii) of subparagraph (A);

"(C) each candidate for the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress, shall notify the Commission and each other candidate for the same office within five days after he makes a contribution to his own campaign which makes his total contribution to his own campaign from his personal funds in excess of the amounts described in clause (i) or (ii) of subparagraph (A);

"(D) the reporting requirement described in subparagraph (C) shall also be in effect when debts are incurred, by the candidate or his authorized committees, the repayment of which the candidate has reason to believe will require the candidate to make contributions to his campaign in excess of the amounts described in clause (i) or (ii) of subparagraph (A);

"(E) the increases in contribution limitations described in subparagraph (A) shall be in effect immediately when any candidate in such election first notifies the Commission, either as part of the reports of his authorized committees as required by sections 304(b)(2)(B) and 304(b)(2)(G) or pursuant to subparagraph (C) of this paragraph, that he has made or has incurred a debt which may require him to make a contribution to his campaign which makes his total contribution to his campaign from his personal funds in excess of the amounts described in clause (i) or (ii) of subparagraph (A); and

"(F) if a candidate fails to file a timely declaration pursuant to this paragraph, the increase in contribution limitations described in subparagraph (A) shall take effect immediately upon the determination by the Commission that such candidate has so failed to file a timely declaration.".

DIRECTED CONTRIBUTIONS

SEC. 5. (a) Section 315(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)) is further amended by adding at the end thereof the following new paragraphs:

"(10) A multicandidate political committee in receipt of a contribution which includes a written request by the contributor that some portion of that contribution be contributed to a specified candidate, or candidates, for Federal office must either—

"(A) act as a conduit for the directed portion of the contribution; or

"(B) return the entire contribution.

"(11) Individuals contributing to a multicandidate political committee on an installment basis, either directly or through such individuals' employer under a payroll deduction plan, may require that up to 75 per centum of the total such individual has contributed since the last general election to that multicandidate political committee be contributed to a specified candidate, or candidates, for Federal office of such individuals' choosing, except that—

"(A) at least forty-five days prior to the election in which the directed contribution is to be made the individual must notify in writing the multicandidate political committee of the following:

"(i) to what candidate, or candidates, for Federal office the contribution is to be made; and

"(ii) in what amount the contribution is to be made;

"(B) the directed contribution for which the multicandidate political committee is a conduit shall be considered a contribution by the individual to the candidate for the purposes of paragraph (1)(A).".

(b) Section 316(b) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441b(b)) is amended by adding the following new paragraph:

"(8) Any solicitation for voluntary contributions allowed under this section must be accompanied by a written disclosure of the prospective contributor's right to direct some portion of such contribution to a specified candidate, or candidates, as provided for in paragraphs (10) and (11) of section 315(a)".

## ALLOWING GENERAL ELECTION CANDIDATES TO CONTROL THEIR CAMPAIGN

SEC. 6. Section 315(a)(7)(B) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(7)(B)) is amended—

(1) by redesignating clause (ii) as clause (iii); and

(2) by inserting the following new clause after clause (i):

"(ii) independent expenditures made in a general or special election for Congress in support of a clearly identified candidate or in opposition to a clearly identified opponent of that candidate will—

"(I) in an election in which there are no more than two campaigns of candidates and at least one of such candidates has expended more than $40,000 at the time any one such candidate has filed with the Commission, in a manner and form to be determined by the Commission, a declaration that all expenditures in support of such candidate or in opposition to a clearly identified opponent of such candidate have the appearance and effect of being in coordination with his campaign, be considered a contribution made to his campaign; or

"(II) in an election in which there are more than two campaigns of candidates and at least one of such candidates has expended more than $40,000, when at least all but one of such candidates have filed with the Commission, in a manner and form to be determined by the Commission, a declaration that all expenditures in that election in support of or in opposition to a clearly identified candidate would have the appearance of being coordinated with at least one of the campaigns involved, be contributions subject to the limitations expressed in subparagraph (1)(A) or (2)(A) multiplied by the number of such candidates;".

## EFFECTIVE DATE

SEC. 7. The amendments made by this Act shall be effective with respect to elections for Federal office held more than ninety days after the date of enactment of this Act.

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## APPENDIX 1C

II

99TH CONGRESS
1ST SESSION

# S. 1563

To amend the Federal Campaign Act of 1971 to prohibit the use of compulsory union dues for political purposes.

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## IN THE SENATE OF THE UNITED STATES

AUGUST 1 (legislative day, JULY 16), 1985

Mr. HELMS (for himself, Mr. ABDNOR, Mr. DENTON, Mr. EAST, Mr. GOLDWATER, Mr. GRASSLEY, Mr. LAXALT, and Mr. NICKLES) introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

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# A BILL

To amend the Federal Campaign Act of 1971 to prohibit the use of compulsory union dues for political purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 316(b)(2)(C) of the Federal Election Campaign Act of 1971 is amended by inserting before the period ": *Provided,* That all contributions, gifts, or payments for such activities are made freely and voluntarily, and are unrelated to dues, fees, or other moneys required as a condition of employment".

SEC. 2. Section 316(b)(3) of the Federal Election Campaign Act of 1971 is amended by—

(1) striking out "and" at the end of subparagraph (B);

(2) striking out the period at the end of subparagraph (C) and inserting "; and"; and

(3) adding after subparagraph (C) the following:

"(D) to use any fees, dues, or assessments paid to any organization as a condition of employment, or money or anything of value secured by physical force, job discrimination, or financial reprisal for (i) registration or get-out-the-vote campaigns, (ii) campaign materials or partisan political activities used in connection with any broadcasting, direct mail, newspaper, magazine, billboard, telephone banks, or any similar type of political communication or advertising, (iii) establishing, administering, or soliciting contributions to a separate segregated fund, or (iv) any other expenditure in connection with any election to any political office or in connection with any primary election or political convention or caucus held to select candidates for any political office.".

## APPENDIX 1D

II

99TH CONGRESS
1ST SESSION

# S. 1787

To amend the Federal Election Campaign Act of 1971 to provide for the public financing of Senate general election campaigns.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 24 (legislative day, OCTOBER 21), 1985

Mr. MATHIAS (for himself, Mr. SIMON, Mr. KENNEDY, Mr. BURDICK, and Mr. HART) introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

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# A BILL

To amend the Federal Election Campaign Act of 1971 to provide for the public financing of Senate general election campaigns.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Senatorial Election Campaign Act".

SEC. 2. The Federal Election Campaign Act of 1971 is amended by adding at the end thereof the following new subchapter:

## "SUBCHAPTER III—PUBLIC FINANCING OF SENATE GENERAL ELECTION CAMPAIGNS

### "DEFINITIONS

"SEC. 501. For purposes of this subchapter—

"(1) unless otherwise provided in this subchapter the definitions set forth in section 301 of this Act apply to this subchapter;

"(2) 'authorized committee' means, with respect to any candidate for election to the United States Senate, any political committee which is authorized in writing by such candidate to accept contributions, incur expenses, or make expenditures on behalf of such candidate to further the election of such candidate. Such authorization shall be addressed to the chairman of the political committee, and a copy of such authorization shall be filed by each candidate with the Commission. A withdrawal of any authorization shall be in writing and shall be addressed and filed in the same manner as the authorization;

"(3) 'candidate' means an individual who has been nominated for election to the office of United States Senator by a major or minor party or who has qualified to have his or her name on the general election ballot;

"(4) 'eligible candidate' means a candidate who is eligible, under section 502, for payments under this subchapter;

"(5) 'expenditure report period' with respect to an election means—

"(A) in the case of a major party candidate, the period beginning on the date such candidate becomes an eligible candidate and ending 30 days after the date of the election or the date such candidate is no longer an eligible candidate, whichever date is earlier; or

"(B) in the case of a candidate other than a candidate of a major party, the same period as the expenditure report period of the major party which has the shortest expenditure report period for such election;

"(6) 'election' means any regularly scheduled general, special, or runoff election, other than a primary election, held to elect a candidate to the United States Senate;

"(7) 'fund' means the Senate General Election Campaign Fund maintained by the Secretary of the Treasury in the Presidential Election Campaign Fund established by section 9006(a) of the Internal Revenue Code of 1954;

"(8) 'major party' means with respect to any election, a political party whose candidate for the office of United States Senator in any of the three preceding elections received, as the candidate of such party, 25 percent or more of the total number of popular votes received by all candidates for such office;

"(9) 'minor party' means with respect to any election, a political party whose candidate for the office of Senator in any of the three preceding elections received, as the candidate of such party, 5 percent or more, but less than 25 percent of the total number of popular votes received by all candidates for such office;

"(10) the term 'qualified campaign expense' means an expense—

"(A) incurred by the candidate or the authorized committee of the candidate for the office of United States Senator to further his or her election to such office,

"(B) incurred within the expenditure report period, or incurred before the beginning of such period to the extent such expense is for property, services, or facilities used during such period, and

"(C) neither the incurring nor paying of which constitutes a violation of any law of the

United States or of the State in which such expense is incurred or paid.

An expense shall be considered as incurred by a candidate or an authorized committee if it is incurred by a person authorized by such candidate or such committee, as the case may be, for expenses on behalf of such candidate or such committee.

"CONDITION FOR ELIGIBILITY FOR PAYMENTS

"SEC. 502. (a) In order to be eligible to receive any payments under this subchapter, the candidate shall agree, in writing—

"(1) to obtain and furnish to the Commission such evidence as it may request of the qualified campaign expenses and contributions of such candidate,

"(2) to keep and furnish to the Commission such records, books, and other information as it may request, and

"(3) to an audit and examination by the Commission under section 507 and to pay or repay any amounts required under such section.

"(b) To be eligible to receive payments under section 503, the candidate of a major party shall certify to the Commission, under penalty of perjury, that—

"(1) such candidate is seeking election to the United States Senate and such candidate and at least one other major party or minor party candidate have qualified for the election ballot under the law of the State involved,

"(2) such candidate and the authorized committees of such candidate will not incur qualified campaign expenses in excess of the aggregate payments to which they are entitled under section 503, unless otherwise provided in this subchapter,

"(3) no contributions to defray qualified campaign expenses have been or will be accepted by such candidate or any of the authorized committees of such candidate except to the extent necessary to make up any deficiency in payments received out of the fund because of the application of section 506(c), and

"(4) no contributions have been or will be accepted by such candidate or any authorized committees of such candidate to defray expenses which are not qualified campaign expenses.

"(c) In order to be eligible to receive any payments under this subchapter, a candidate other than a candidate of a major party shall certify to the Commission under penalty of perjury, that—

"(1) such candidate is seeking election to the United States Senate and such candidate and at least one other candidate of a major party have qualified for the election ballot under the law of the State involved, "(2) such candidate and the authorized committees of such candidate will not incur qualified campaign expenses in excess of the aggregate payments to which an eligible candidate of a major party is entitled under section 503, unless otherwise provided in this subchapter, and

"(3) such candidate and the authorized committees of such candidate will accept and expend or retain contributions to defray qualified campaign expenses only to the extent that the qualified campaign expenses incurred by such candidate and the authorized committees of such candidate certified to under paragraph (2) exceed the aggregate payments received by such candidate out of the fund pursuant to section 506.

"(d) Certification for payment to a candidate shall be made by the Commission within 5 days after the date the Commission receives a certification from such candidate, pursuant to this section. Such certification shall be in such form and filed as the Commission shall prescribe by rule or regulation.

"(e)(1) To be eligible to receive any payment under this subchapter, a candidate shall certify to the Commission, under penalty of perjury, that such candidate will not knowingly make expenditures from his or her personal funds, or the personal funds of his or her immediate family in connection with such candidate's campaign for election in excess of, in the aggregate, $20,000.

"(2) For purposes of this subchapter, the term 'immediate family' means the spouse, any child, parent, grandparent, brother, halfbrother, sister, or halfsister of the candidate, and the spouses of such persons.

"(f) If an individual ceases to be a candidate such individual—

"(1) shall no longer be eligible to receive any payments under this subchapter, except that such individual shall be eligible to receive payments to defray qualified campaign expenses incurred while such person was an eligible candidate actively seeking election to the Senate; and

"(2) shall pay to the Secretary, as soon as practicable after the date upon which such individual ceases to be a candidate, an amount equal to the amount of payments received by such individual under this subchapter if such payments are not used to defray qualified campaign expenses.

"ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS

"SEC. 503. (a) Subject to the provisions of this chapter—

"(1) each eligible candidate of a major party in an election shall be entitled to equal payments under this subchapter in an amount which, in the aggregate, shall not exceed—

"(A) in each State with a voting-age population of 1,000,000 or less: $500,000";

"(B) in each State with a voting-age population greater than 1,000,000 but less than 3,000,000: an amount equal to 50 cents times such voting-age population; and

"(C) in each State with a voting-age population of 3,000,000 or over: an amount equal to 30 cents times such voting-age population, but not less than $1,500,000.

"(2) An eligible candidate of a minor party in an election shall be entitled to a payment under this subchapter equal in the aggregate to an amount which bears the same ratio to the amount allowed under paragraph (1) for a major party as the number of popular votes received by the candidate for Senator of the minor party, as such candidate, in the preceding election bears to the average number of popular votes received by the candidates for Senator of the major parties in the preceding election.

"(3) An eligible candidate, other than a candidate of a major or minor party, who receives 5 percent or more of the total number of popular votes cast for the office of United States Senate in such election shall be entitled to payments pursuant to this subchapter equal in the aggregate to an amount which bears the same ratio to the amount allowed under paragraph (1) for a major party as the number of popular votes received by such candidate in such election bears to the average number of popular votes received in such election by the candidates for Senator of the major parties. All such payments shall be made at such time after the election as the Commission determines the amount of payments such candidate is eligible for pursuant to this subparagraph. The Commission shall certify such amount to the United States Treasury for payment.

"(b) The aggregate payments to which an eligible candidate shall be entitled under paragraph (2) or (3) of subsection (a), shall not exceed an amount equal to the lesser of—

"(1) the amount of qualified campaign expenses incurred by an eligible candidate and the authorized committees of such candidate, reduced by the amount of contributions allowed to defray qualified campaign expenses received and expended or retained by an eligible candidate and such committees, or

"(2) the aggregate payments to which an eligible candidate of a major party is entitled under subsection (a)(1), reduced by the amount of contributions described in paragraph (1) of this subsection.

"(c) An eligible candidate shall be entitled to payments only—

"(1) to defray qualified campaign expenses incurred by an eligible candidate or the authorized committees of such candidate, or

"(2) to repay loans the proceeds of which were used to defray such qualified campaign expenses, or otherwise to restore funds (other than contributions to defray qualified campaign expenses received and expended by such candidate or such committees) used to defray such qualified campaign expenses.

"ADDITIONAL ENTITLEMENT OF OPPONENTS OF NONPUBLICLY FINANCED CANDIDATES

"SEC. 504. (a) Within 5 days after nomination by a major or minor party, and under such regulations as the Commission may prescribe, each candidate nominated by a major or minor party shall notify the Commission in writing of his or her intention to accept or not accept the funds to which he or she is entitled under section 503.

"(b)(1) A candidate of a major party who has elected to accept the funds for which he or she has qualified under section 503 and who is opposed by a major party candidate who has elected not to accept public funding shall be entitled to receive additional funds from the general fund of the United States Treasury, pursuant to paragraph (2).

"(2)(A) Subject to the provisions of subparagraph (B), a major party candidate eligible to receive funds pursuant to paragraph (1), shall receive additional funds in the amount of one dollar for every dollar of contributions or expenditures raised, incurred, or expended by the candidate not accepting funding.

"(B) Such additional funds shall only match those contributions or expenditures raised, incurred, or expended by the candidate not accepting funding which are in excess of the entitlement of such eligible candidate.

"(c) For purposes of implementing subsection (b), a candidate who elects not to accept public funding shall report his or her receipts and expenditures to the Commission—

"(1) monthly for contributions or expenditures received, incurred, or expended prior to 60 days prior to the date of the election;

"(2) weekly for contributions or expenditures received, incurred, or expended from 59 to 11 days prior to the date of the election; and

"(3) daily for contributions or expenditures received, incurred, or expended during the 10 days prior to the date of the election.

"(d) Notwithstanding the provisions of section 505—

"(1) if a major party candidate is eligible, pursuant to subsection (b), to receive additional funding because of contributions or expenditures received, incurred, or expended by such opponent between the date 59 days prior to the date of the election and the date of the election which are required to be reported by paragraph (2) or (3) of subsection (c), and

"(2) such eligible candidate files a request with the Commission stating that such candidate is eligible to receive such additional funds,

the Commission, within 24 hours after such request is filed, shall certify to the Secretary of the Treasury for payments to such eligible candidate.

"CERTIFICATION BY COMMISSION

"SEC. 505. (a) Except as otherwise provided in section 504(d), not later than 5 days after a candidate files a request with the Commission stating that he or she has met all applicable conditions for eligibility to receive payments under this subchapter, the Commission shall certify to the Secretary of the Treasury (hereafter in this subchapter referred to as the 'Secretary') for payment to such eligible candidate, payment in full of amounts to which such candidate is entitled under section 503, unless the provisions of section 506(c) apply.

"(b) Initial certifications by the Commission under subsection (a), and all determinations made by it under this chapter shall be final and conclusive, except to the extent that they are subject to examination and audit by the Commission under section 507 and judicial review under section 511.

"PAYMENTS TO ELIGIBLE CANDIDATES

"SEC. 506. (a) The Secretary shall maintain in the Presidential Election Campaign Fund established by paragraph 9006(a) of the Internal Revenue Code of 1954, in addition to any accounts maintained under such section, a separate account to be known as the 'Senate General Election Campaign Fund'. The Secretary shall deposit into such fund, for use by a candidate eligible for payments under this subchapter, the amount available after the Secretary determines that amounts in the fund necessary for payments under subtitle H of the Internal Revenue Code of 1954 are adequate. The moneys designated for such account shall remain available without fiscal year limitation.

"(b) Upon receipt of a certification from the Commission under section 505, the Secretary shall promptly pay to the candidate, out of the fund, the amount certified by the Commission. Amounts paid to any such candidate shall be under the control of such candidate.

"(c) If at the time of a certification by the Commission under section 505 for payment to an eligible candidate, the Secretary determines that the moneys in the fund are not, or may not be, sufficient to satisfy the full entitlement of such eligible candidate, he shall withhold from such payment such amount as he determines to be necessary to assure that an eligible candidate will receive his or her pro rata share of his or her full entitlement. Amounts so withheld shall be paid when the Secretary determines that there are sufficient moneys in the fund to pay such amounts, or portions thereof, to all eligible candidates from whom amounts have been withheld, but, if there are not sufficient moneys in the fund to satisfy the full entitlement of an eligible candidate, the amounts so withheld shall be paid in such manner that each eligible candidate receives his or her pro rata share of his or her full entitlement.

"EXAMINATIONS AND AUDITS; REPAYMENTS

"SEC. 507. (a) Notwithstanding the provisions of section 311(b), after each election, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of each candidate for the United States Senate who received payments under this subchapter.

"(b)(1) If the Commission determines that any portion of the payments made to a candidate under this subchapter was in excess of the aggregate payments to which such candidate was entitled, it shall so notify such candidate, and such candidate shall pay to the Secretary an amount equal to the excess.

"(2) If the Commission determines that a candidate or any authorized committee of such candidate incurred qualified campaign expenses in excess of the aggregate payments to which the candidate was entitled under section 503, it shall notify such candidate of the amount of such excess and such candidate shall pay to the Secretary an amount equal to such amount.

"(3) If the Commission determines that a candidate or any authorized committee of such candidate accepted contributions, other than contributions to make up deficiencies in payments out of the fund because of the application of section 506(c) to defray qualified campaign expenses, other than qualified campaign expenses with respect to which payment is required under paragraph (2), it shall notify such candidate of the amount of the contributions so accepted, and such candidate shall pay to the Secretary an amount equal to such amount.

"(4) If the Commission determines that any amount of any payment made to a candidate under section 506 was used for any purpose other than—

"(A) to defray the qualified campaign expenses with respect to which such payment was made, or

"(B) to repay loans the proceeds of which were used to defray qualified campaign expenses,

it shall notify such candidate of the amount so used, and such candidate shall pay to the Secretary an amount equal to such amount.

"(5) No payment shall be required from a candidate under this subsection to the extent that such payment, when added to other payments required from such candidate under this subsection, exceeds the amount of payments received by such candidate under this subchapter.

"(c) No notification shall be made by the Commission under subsection (b) with respect to an election more than 3 years after the date of such election.

"(d) All payments received by the Secretary under subsection (b) shall be deposited in the Senate General Election Campaign Fund established in section 506.

"CRIMINAL PENALTIES

"SEC. 508. (a)(1) It shall be unlawful for an eligible candidate of a political party in an election or for any authorized committee of such candidate to knowingly and willfully incur qualified campaign expenses in excess of the aggregate payments to which an eligible candidate of a major party is entitled with respect to such election.

"(2) Any person who violates paragraph (1) shall be fined not more than $5,000, or imprisoned not more than one year, or both. In the case of a violation by any authorized committee, any officer or member of such committee who knowingly and willfully consents to such violation shall be fined not more than $5,000, or imprisoned not more than one year, or both.

"(b)(1) It shall be unlawful for an eligible candidate of a major party in an election or for any authorized committee of such candidate to knowingly and willfully accept any contribution to defray qualified campaign expenses, except to the extent necessary to make up any deficiency in payments received out of the fund because of the application of section 506 or to defray expenses which would be qualified campaign expenses but for subparagraph (C) of section 501(10).

"(2) It shall be unlawful for an eligible candidate of a political party (other than an eligible candidate of a major party) in an election or for any authorized committee of such candidate to knowingly and willfully accept and expend or retain contributions to defray qualified campaign expenses in an amount which exceeds the qualified campaign expenses incurred with respect to such election by such eligible candidate and an authorized committee of such candidate.

"(3) Any person who violates paragraph (1) or (2) shall be fined not more than $5,000, or imprisoned not more than one year, or both. In the case of a violation by any authorized committee, any officer or member of such committee who knowingly and willfully consents to such violation shall be fined not more than $5,000, or imprisoned not more than one year, or both.

"(c)(1) It shall be unlawful for any person who receives any payment under section 506, or to whom any portion of any payment received under such section is transferred, knowingly and willfully to use, or authorize the use of, such payment or such portion for any purpose other than—

"(A) to defray the qualified campaign expenses with respect to which such payment was made, or

"(B) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray such qualified campaign expenses.

"(2) Any person who violates paragraph (1) shall be fined not more than $10,000, or imprisoned not more than five years, or both.

"(d)(1) It shall be unlawful for any person knowingly and willfully—

"(A) to furnish any false, fictitious, or fraudulent evidence, books, or information to the Commission under this subchapter, or to include in any evidence, books, or information so furnished any misrepresentation of a material fact, or to falsify or conceal any evidence, books, or information relevant to a certification by the Commission or an examination and audit by the Commission under this subchapter; or

"(B) to fail to furnish to the Commission any records, books, or information requested by it for purposes of this subchapter.

"(2) Any person who violates paragraph (1) shall be fined not more than $10,000, or imprisoned not more than five years, or both.

"(e)(1) It shall be unlawful for any person knowingly and willfully to give or accept any kickback or any illegal payment in connection with any qualified campaign expense of an eligible candidate or any authorized committee of such candidate.

"(2) Any person who violates paragraph (1) shall be fined not more than $10,000, or imprisoned not more than five years, or both.

"(3) In addition to the penalty provided by paragraph (2), any person who accepts any kickback or illegal payment in connection with any qualified campaign expense of an eligible candidate or any authorized committee of such candidate shall pay to the Secretary of the Treasury, for deposit in the general fund of the Treasury, an amount equal to 125 percent of the kickback or payment received.

"(f)(1) It shall be unlawful for any individual to disclose any information obtained under the provisions of this subchapter except as may be required by law.

"(2) Any person who violates paragraph (1) shall be fined not more than $5,000, or imprisoned not more than one year, or both.

### "REPORTS TO CONGRESS; REGULATIONS

"SEC. 509. (a) The Commission shall, as soon as practicable after each election, submit a full report to the Senate setting forth—

"(1) the qualified campaign expenses (shown in such detail as the Commission determines necessary) incurred by a candidate and the authorized committees of such candidate;

"(2) the amounts certified by it under section 505 for payment to each eligible candidate; and

"(3) the amount of payments, if any, required from such candidate under section 507, and the reasons for each payment required.

Each report submitted pursuant to this section shall be printed as a Senate document.

"(b) The Commission is authorized to prescribe such rules and regulations in accordance with the provisions of subsection (c), to conduct such examinations and audits (in addition to the examinations and audits required by section 507), to conduct such investigations, and to require the keeping and submission of such books, records, and information, as it deems necessary to carry out the functions and duties imposed on it by this subchapter.

"(c) Thirty days before prescribing any rule or regulation under subsection (b), the Commission shall transmit a statement with respect to such rule or regulation to the Senate, setting forth the proposed rule or regulation. The statement shall contain a detailed explanation and justification of such rule or regulation.

"PARTICIPATION BY COMMISSION IN JUDICIAL PROCEEDINGS

"SEC. 510. (a) The Commission is authorized to appear in and defend against any action filed under section 511, either by attorneys employed in its office or by counsel whom it may appoint without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and whose compensation it may fix without regard to provisions of chapter 51 and subchapter III of chapter 53 of such title.

"(b) The Commission is authorized to appear, through attorneys and counsel described in subsection (a), in the district courts and other appropriate courts of the United States to seek recovery of any amounts determined to be payable to the Secretary of the Treasury as a result of any examination and audit made pursuant to section 507.

"(c) The Commission is authorized to petition the courts of the United States for declaratory or injunctive relief concerning any civil matter arising under this subchapter, through attorneys and counsel described in subsection (a). Upon application of the Commission, an action brought pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28, United States Code, and any appeal from the determination of such court shall lie to the Supreme Court of the United States. Judges designated to hear the case shall assign the case for hearing at the earliest practicable date, participate in the hearing and determination thereof, and cause the case to be in every way expedited.

"(d) The Commission is authorized on behalf of the United States to appeal from, and to petition the Supreme Court of the United States for certiorari to review judgments or decrees entered with respect to actions in which it appears pursuant to the authority provided in this section.

"JUDICIAL REVIEW

"SEC. 511. (a) Any certification, determination, or other action by the Commission made or taken pursuant to the provisions of this subchapter shall be subject to review by the United States Court of Appeals for the District of Columbia Circuit upon petition filed in such court by any interested person. Any petition filed pursuant to this section shall be filed within thirty days after such certification, determination, or other action by the Commission.

"(b)(1) The Commission, the national committee of any political party, or any individual eligible to vote for a candidate is authorized to institute an action under this section, including an action for declaratory judgment or injunctive relief, as may be appropriate to implement or construe any provision of this subchapter.

"(2) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this subsection and shall exercise such jurisdiction without regard to whether a person asserting rights under the provisions of this subsection has exhausted administrative or other remedies provided by law. Such proceedings shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28, United States Code, and any appeal shall lie to the Supreme Court of the United States. Judges designated to hear the case shall assign the case for hearing at the earliest practicable date, participate in the hearing and determination thereof, and cause the case to be in every way expedited.".

SEC. 3. (a) Section 315(c) of the Federal Election Campaign Act of 1971 is amended by striking out "subsection (b) of this section and subsection (d) of this section" and inserting in lieu thereof "subsections (b) and (d) of this section and subsection (a) of section 503".

(b) Section 315(c)(2)(B) of the Federal Election Campaign Act of 1971 is amended by inserting before the period at the end thereof the following: ", except that with respect to the limitations established by subchapter III of this Act, the term 'base period' means the calendar year 1985".

SEC. 4. This Act and the amendments made by this Act shall become effective on January 1, 1987, and shall apply to campaigns for election to the Senate after such date.

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## APPENDIX 1E

X

99TH CONGRESS
1ST SESSION

# S. 1806

To amend the Federal Election Campaign Act of 1971 to change certain contribution limits for congressional elections and to amend the Communications Act of 1934 regarding the broadcasting of certain material regarding candidates for Federal elective office, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 29 (legislative day, OCTOBER 28), 1985

Mr. BOREN (for himself, Mr. GOLDWATER, Mr. HART, Mr. LEVIN, Mrs. KASSEBAUM, and Mr. RUDMAN) introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

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# A BILL

To amend the Federal Election Campaign Act of 1971 to change certain contribution limits for congressional elections and to amend the Communications Act of 1934 regarding the broadcasting of certain material regarding candidates for Federal elective office, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Campaign Finance Reform Act of 1985".

(a) Section 315(a)(1)(A) of the Federal Election Campaign Act of 1971 is amended by striking out "$1,000" and inserting in lieu thereof "$1,500".

(b) Section 315(a)(2) of the Federal Election Campaign Act of 1971 is amended—

(1) by striking out "or" at the end of subparagraph (B);

(2) striking out "$5,000." in subparagraph (C) and inserting in lieu thereof "$3,000;"; and

(3) by adding at the end the following new subparagraphs:

"(D) to any candidate and his authorized political committees with respect to—

"(i) a general or special election for the office of Representative in, or Delegate or Resident Commissioner to, the Congress (including any primary election, convention, or caucus relating to such general or special election) which exceed $100,000 ($125,000 if at least two candidates qualify for the ballot in the general or special election involved and at least two candidates qualify for the ballot in a primary election relating to such general or special election) when added to the total of contributions previously made by multicandidate political committees to such candidate and his authorized political committees with respect to such general or special election (including any primary election, convention, or caucus relating to such general or special election); or

"(ii) a runoff election for the office of Representative in, or Delegate or Resident Commissioner to, the Congress which exceed $25,000 when added to the total of contributions previously made by multicandidate political committees to such candidate and his authorized political committees with respect to such runoff election; or

"(E) to any candidate and his authorized political committees with respect to—

"(i) a general or special election for the office of Senator (including any primary election, convention, or caucus relating to such general or special election) which exceed the greater of $175,000 ($200,000 if at least two candidates qualify for the ballot in the general or special election involved and at least two candidates qualify for the ballot in a primary election relating to such general or special election) or the amount equal to $35,000 times the number of Representatives to which the State involved is entitled, when added to the total of contributions previously made by multicandidate political committees to such candidate and his authorized political committees with respect to such general or special election (including any primary election, convention, or caucus relating to such general or special election);

"(ii) a runoff election for the office of Senator which exceed the greater of $25,000 or the amount equal to $12,500 times the number of Representatives to which the State involved is entitled, when added to the total of contributions previously made by multicandidate political committees to such candidate and his authorized political committees with respect to such runoff election; or

"(iii) a general or special election for the office of Senator (including any primary election, runoff election, convention, or caucus relating to such general or special election) which exceed $750,000 when added to the total of contributions previously made by multicandidate political committees to such candidate and his authorized political committees with respect to such general or special election (including any primary election, convention, or caucus relating to such general or special election).".

(c) Section 315(a)(8) of the Federal Election Campaign Act of 1971 is amended—

(1) by striking out "person" the second place it appears and inserting in lieu thereof "person and also the intermediary or conduit".

(d) Section 315(a)(8) of the Federal Election Campaign Act of 1971 is amended—

"(1) by adding at the end of the paragraph the following subparagraph:

"(A) Notwithstanding any other provision of this Act, each multicandidate political committee which makes an independent expenditure in a Federal election in connection with such candidate's campaign, shall not do so in any newspaper, magazine, broadcast or other media advertisement without the following notice placed on, or within such advertisement: "This message has been authorized and paid for by (name of committee/or any affiliated organization of the committee), (name/title of treasurer and/or president).

Its cost of presentation is not subject to any campaign contribution limits."

(e) Section 315 of the Communications Act of 1934 (47 U.S.C. 315) is amended—

(1) by redesignating subsections (b), (c), and (d) as subsections (c), (d), and (e), respectively; and

(2) by inserting immediately after subsection (a) the following:

"(b)(1) If any licensee permits a person to utilize a broadcasting station to broadcast material which either endorses a legally qualified candidate for any Federal elective office or opposes a legally qualified candidate for that office, such licensee shall, within a reasonable period of time, provide to any legally qualified candidate opposing the candidate endorsed (or to an authorized committee of such legally qualified candidate), or to any legally qualified candidate who was so opposed (or to an authorized committee of such legally qualified candidate), the opportunity to utilize, without charge, the same amount of time on such broadcasting station, during the same period of the day, as was utilized by such person.

"(2) For purposes of this subsection, the term 'person' includes an individual, partnership, committee, association, corporation, or any other organization or group of persons, but such term does not include a legally qualified candidate for any Federal elective office or an authorized committee of any such candidate.".

(f) Section 315(a) of the Communications Act of 1934 (47 U.S.C. 315(a)) is amended by striking "section" and inserting in lieu thereof "subsection".

(g) Section 315(e) of the Communications Act of 1934, as so redesignated by subsection (a) of this section, is amended to read as follows:

"(e) For purposes of this section—

"(1) the term 'authorized committee' means, with respect to any candidate for nomination for election, or election, to any Federal elective office, any committee, club, association, or other group of persons which receives contributions or makes expenditures during a calendar year in an aggregate amount exceeding $1,000 and which is authorized by such candidate to accept contributions or make expenditures on behalf of such candidate to further the nomination or election of such candidate;

"(2) the term 'broadcasting station' includes a community antenna television system; and

"(3) the term 'licensee' and 'station licensee' when used with respect to a community antenna system mean the operator of such system.".

(h) Section 301(17) of the Federal Election Campaign Act of 1971 is amended to read as follows:

"(17) The term 'independent expenditure' means an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate.

"(A) For the purposes of this subsection, 'cooperation or consultation with any candidate' with respect to an election cycle means, but is not limited to the following—

"(i) the person making the independent expenditure communicates with, advises, or counsels the candidate at any time on the candidate's plans, projects, or needs relating to the candidate's pursuit of nomination for election, or election, to Federal office, in the same election cycle, including any advice relating to the candidate's decision to seek Federal office;

"(ii) the person making the independent expenditure includes as one of its officers, directors, or other employees an individual who communicated with, advised or counseled the candidate at any time on the candidate's plans, projects, or needs relating to the candidate's pursuit of nomination for election, or election, to Federal office, in the same election cycle, including any advice relating to the candidate's decision to seek Federal office; and

"(iii) the person making the independent expenditure retains the professional services of any individual or other person also providing those services to the candidate in connection with the candidate's pursuit of nomination for election, or election, to Federal office, in the same election cycle, including any services relating to the candidate's decision to seek Federal office.".

(i) If any provision of this Act or the application of it to any person or circumstance is held invalid, the remainder of the Act and the application of the provision to any other person or circumstance shall not be affected by such invalidation.

(j) The amendments made by such sections (a) through (i) of this section shall apply with respect to general, special, and runoff election occurring after December 31, 1986.

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# APPENDIX 1F

II

99TH CONGRESS
1ST SESSION

# S. 1891

To amend the Federal Campaign Reform Act.

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IN THE SENATE OF THE UNITED STATES

DECEMBER 3 (legislative day, DECEMBER 2), 1985

Mr. HEINZ (for himself, Mr. LAXALT, and Mr. LUGAR) introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

---

# A BILL

To amend the Federal Campaign Reform Act.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. That this Act may be cited as the "Federal Campaign Reform Act Amendments of 1985".

SEC. 2. Except as otherwise expressly provided in this Act, any reference in this Act to a section or other provision is a reference to a section or other provision of the Federal Election Campaign Act of 1971.

SEC. 3. (a) Section 301(8)(A)(i) (2 U.S.C. 431(8)(A)(i)) is amended by inserting after "Federal office" the following:

"or for the purpose of expressly advocating that a clearly identified individual become a candidate for Federal office".

(b) Section 301(8)(B) (2 U.S.C. 431(8)(B)) is amended—

(1) in clause (xiii), by striking out "and" after the semicolon;

(2) in clause (xiv), by striking out the period and inserting in lieu thereof "; and"; and

(3) by adding at the end the following new clause:

"(xv) with respect to a political committee of a political party, any payment to such committee specifically designated to defray establishment, administration, and solicitation costs of such committee, but such payment shall be reported in accordance with section 304(a)(11).".

(c)(1) Section 301(8)(B)(x) (2 U.S.C. 431(8)(B)(x)) is amended by striking out "by a State" and inserting in lieu thereof "by a national, State,".

(2) Section 301(8)(B)(xii) (2 U.S.C. 431(8)(B)(xii)) is amended—

(A) by striking out "by a State" and inserting in lieu thereof "by a national, State,"; and

(B) by striking out "for President and Vice President".

(d) Section 301(9)(A)(i) (2 U.S.C. 431(9)(A)(i)) is amended by inserting after "Federal office" the following: "or for the purpose of expressly advocating that a clearly identified individual become a candidate for Federal office".

(e) Section 301(9)(B) (2 U.S.C. 431(9)(B)) is amended—

(1) in clause (ix), by striking the "and" after the semicolon;

(2) in clause (x), by striking out the period and inserting in lieu thereof "; and"; and

(3) by adding at the end the following new clause:

"(xi) with respect to a political committee of a political party, any establishment, administration, solicitation costs of such committee, but such costs shall be reported in accordance with section 304(a)(11);".

(f)(1) Section 301(9)(B)(viii) (2 U.S.C. 431(9)(B)(viii)) is amended by striking out "by a State" and inserting in lieu thereof "by a national, State,".

(2) Section 301(9)(B)(ix) (2 U.S.C. 431(9)(B)(ix)) is amended—

(A) by striking out "by a State" and inserting in lieu thereof "by a national, State,"; and

(B) by striking out "for President and Vice President".

SEC. 4. Section 304(a) (2 U.S.C. 434(a)) is amended by adding at the end the following new paragraph:

"(11) If the committee is a political committee of a political party, with respect to payments under section

301(8)(B)(XV) and costs under section 301(9)(B)(VI) the treasurer shall file—

"(A) a report covering the period beginning January 1 and ending June 30, which shall be filed no later than July 31; and

"(B) a report covering the period beginning July 1 and ending December 31, which shall be filed no later than January 3 of the following calendar year.".

SEC. 5. Section 307(e) (2 U.S.C. 437d(e)) is amended to read as follows—

"(e) Except as provided in section 437g(a)(8) of this title and except with respect to complaints alleging a violation of section 438(a)(4) of this title, the power of the Commission to initiate civil actions under subsection (a)(6) of this section shall be the exclusive civil remedy for the enforcement of the provisions of this Act.".

SEC. 6. Section 308(a)(2) (2 U.S.C. 437(a)(2)) is amended by striking out "or any authorized committee of such candidate" and inserting in lieu thereof "any authorized committee of such candidate, or any political committee of a political party".

SEC. 7. (a) Section 309(a) (2 U.S.C. 437g(a)) is amended by adding at the end the following new paragraphs:

"(13) The Commission shall establish time limitations for investigations under this subsection.

"(14) The Commission shall publish an index of all investigations under this section and shall update the index quarterly.".

(b) Section 309(a)(2) (2 U.S.C. 437g(a)(2)) is amended by adding at the end the following new sentences: "Before the Commission conducts any vote under this paragraph based on information ascertained in the normal course of carrying out its supervisory responsibilities, the person alleged to have committed the violation shall be notified of the allegation and shall have the opportunity to demonstrate, in writing, to the Commission within 15 days after notification that no action should be taken against such person on the basis of the information. Prior to any determination, the Commission may request voluntary responses to questions from any person who may become the subject of an investigation. A determination under this paragraph shall be accompanied by a written statement of the reasons for the determination.".

(c) Section 309(a)(3) (2 U.S.C. 437g(a)(3)) is amended by adding at the end the following new sentences: "The Commission shall make available to a respondent any documentary or other evidence relied on by the general counsel in making a recommendation under this subsection. Any brief or report by the general counsel that replies to the respondent's brief shall be provided to the respondent".

(d) Section 309(a)(4)(A) (2 U.S.C. 437g(a)(4)(A)) is amended by adding at the end the following new clauses:

"(iii) A determination under clause (i) shall be made only after opportunity for a hearing upon request of the respondent and shall be accompanied by a statement of the reasons for the determination.

"(iv) The Commission shall not require that any conciliation agreement under this paragraph contain an admission by the respondent of a violation of this Act or any other law.".

(e) Section 309(a)(5) (2 U.S.C. 437g(a)(5)) is amended—

(1) by striking out subparagraph (A); and

(2) by redesignating subparagraphs (B), (C), and (D) as subparagraphs (A), (B), and (C) respectively.

SEC. 8. The sentence beginning "The district court" in section 310(a) (2 U.S.C. 437h(a)) is amended by striking out ", which shall hear the matter sitting en banc".

SEC. 9. (a) Section 311(a) (2 U.S.C. 438(a)) is amended--

(1) by inserting the following new paragraph as subsection (5):

"(5) require each person requesting copies of reports and statements to sign an affidavit certifying that the information requested shall not be used in violation of the prohibitions contained in this section. The Commission, the Secretary and the Clerk shall, within 48 hours, provide a copy of each such affidavit to the treasurer of each committee which is the subject to each request;" and

(2) by redesignating sections (6), (7), (8), (9) and (10) as sections (7), (8), (9), (10) and (11), respectively.

(b) Section 311(b) (2 U.S.C. 438(t)) is amended by adding at the end the following new sentences: "Audits under this subsection shall be conducted in accordance with procedures published by the Commission. Prior to any vote relating to any audit findings, the Commission shall give the political committee involved an opportunity to respond in writing to any information relating to the prospective audit furnished to the Commission by the general counsel or any other member of the staff of the Commission".

SEC. 10. (a) Section 315(a)(2) (2 U.S.C. 441a(a)(2)) is amended—

(1) in subparagraph (A), by inserting after "(A)" the following: "except as provided in subparagraph (D),";

(2) in subparagraph (B), by striking out "or" after the semicolon;

(3) in subparagraph (C), by striking out the period and inserting in lieu thereof "and"; and

(4) by adding at the end the following new subparagraph:

"(D) in the case of a multicandidate political committee that is a political committee of a political party, to any candidate and his or her authorized political committees with respect to an election for Federal office which, in the aggregate, exceed $15,000.".

(b) Section 315 (2 U.S.C. 441a) is amended—

(1) by striking out subsection (g); and

(2) by redesignating subsection (h) as subsection (g).

(c) Section 315(b)(1) (2 U.S.C. 441a(b)(1)) is amended—

(1) in subparagraph (A), by striking out "$10,000,000" and inserting in lieu thereof "$18,000,000", and by striking out ", except the" and all that follows through "or $200,000"; and

(2) in subparagraph (B), by striking out "$20,000,000" and inserting in lieu thereof "$30,000,000".

(d) Section 315(d)(1) (2 U.S.C. 441a(d)(1)) is amended by striking out "paragraphs (2) and (3) of this subsection." and inserting in lieu thereof "paragraph (2) of this subsection.".

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## APPENDIX 1G

II

99TH CONGRESS
2D SESSION

# S. 2016

To provide for public financing of Federal elections for the United States Senate, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 23 (legislative day, JANUARY 21), 1986

Mr. DIXON introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

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# A BILL

To provide for public financing of Federal elections for the United States Senate, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Senate General Election Reform Act of 1986".

SEC. 2. The Federal Election Campaign Act of 1971 is amended by adding at the end thereof the following new subchapter:

## "SUBCHAPTER III—PUBLIC FINANCING OF SENATE GENERAL ELECTION CAMPAIGNS

### "DEFINITIONS

"SEC. 501. For purposes of this subchapter—

"(1) the definitions set forth in section 301 of this Act apply to this subchapter;

"(2) 'general election' means any regularly scheduled or special election held for the purpose of electing a candidate to the United States Senate;

"(3) 'eligible candidate' means a candidate who is eligible, under section 502, for payments under this subchapter;

"(4) 'account' means the Senate General Election Campaign Account maintained by the Secretary of the Treasury in the Presidential Election Campaign Fund established by section 9006(a) of the Internal Revenue Code of 1954; and

"(5) 'authorized committee' means, with respect to any candidate for election to the United States Senate, any political committee which is authorized in writing by such candidate to accept contributions or to make expenditures on behalf of such candidate to further the election of such candidate.

"ELIGIBILITY FOR PAYMENTS

"SEC. 502. (a) To be eligible to receive payments under this subchapter, a candidate shall agree—

"(1) to obtain and to furnish to the Commission any evidence it may request about the campaign expenditures and contributions of such candidate;

"(2) to keep and to furnish to the Commission any records, books, and other information it may request; and

"(3) to an audit and examination by the Commission under section 507 and to pay any amounts required under such section.

"(b) To be eligible to receive payments under this subchapter, a candidate shall certify to the Commission that—

"(1) the candidate and the authorized committees of such candidate will not make campaign expenditures greater than the limitations set forth in section 315(j) of this Act;

"(2) no contributions will be accepted by the candidate or the authorized committees of such candidate in violation of section 315(a) of this Act;

"(3) the candidate is seeking election to the United States Senate, and such candidate and the authorized committees of such candidate have received contributions for that campaign in a total amount of not less than the smaller of—

"(A) 20 per centum of the amount of expenditures the candidate may make in connection with the campaign under section 315(j) of this Act, or

"(B) $200,000; and

"(4) at least two candidates have qualified for the election ballot for election to the same seat in the United States Senate under the law of the State involved.

"(c) Agreements, certifications, and declarations under this section shall be filed with the Commission at the time required by the Commission.

"ENTITLEMENT TO PAYMENTS

"SEC. 503. (a) Every candidate who meets the eligibility requirements in section 502 is entitled to payments for use in such candidate's general election campaign in an amount equal to the amount of contributions such candidate and the authorized committees of such candidate receive for that campaign.

"(b) A candidate entitled to payments under subsection (a) shall be entitled to—

"(1) an initial payment in an amount equal to the contributions certified under section 502(b)(3); and

"(2) additional payments to be paid in—

"(A) multiples of $10,000 under section 506, if, with respect to each such payment, the eligible candidate and the authorized committees of such candidate have received contributions aggregating $10,000; and

"(B) a final payment under section 506 (designated as such by the candidate involved) of the balance of the entitlement of the candidate under this section.

"(c) In determining the amount of contributions received by a candidate and the authorized committees of such candidate for the purposes of subsection (a) of this section and section 502(b)(3)—

"(1) no contribution received by the candidate or any of the authorized committees of such candidate as a subscription, loan, advance, deposit, or as a contribution of products or services, shall be taken into account;

"(2) no contribution received from a political committee or any other organization shall be taken into account;

"(3) no contribution received from any individual shall be taken into account to the extent that such contribution exceeds $100 when added to the amount of all other contributions made by that individual to or for the benefit of such candidate in connection with the general election campaign of such candidate;

"(4) no contribution received from any individual who resides in a State other than the State in which the election is held shall be taken into account to the extent that such contribution when added to all other contributions received from such individuals exceeds 20 per centum of the aggregate of contributions otherwise taken into account;

"(5) no contribution (A) which is received before September 1 of the year immediately preceding the year in which any general election is held and (B) which is not maintained in a separate account until the date on which such candidate qualifies under the law of the appropriate State for election, shall be taken into account;

"(6) no contribution maintained in such a separate account shall be used to make any expenditure until the date on which the candidate qualifies under the law of the appropriate State for election to the Senate; and

"(7) no contribution received after the date on which the election is held shall be taken into account.

"(d) Notwithstanding the provisions of subsection (a), no candidate is entitled to the payment of any amount under this section which, when added to the total amount of contributions received by such candidate and the authorized committees of such candidate and any other payments made to the candidate under this subchapter for such candidate's general election campaign, exceeds the amount of the expenditures limitation applicable to such candidate for that campaign under section 315(j)(1) of this Act.

"WAIVER OF OVERALL EXPENDITURE LIMITATION; ADDITIONAL PUBLIC FINANCING FOR CERTAIN CANDIDATES

"SEC. 504. (a)(1) Not later than the date on which a candidate qualifies under the law of the appropriate State for election to the Senate of the United States, or ninety days before the date of any general election, whichever is earlier, each candidate for election to the Senate of the United States shall file with the Commission a declaration of whether such candidate intends to make expenditures in excess of the limitations on expenditures under section 315(j) of this Act.

"(2) Not later than sixty days before the date of such general election, each candidate who has reason to believe that he may make expenditures in excess of such limitations shall notify the Commission to that effect, unless such candidate filed with the Commission a timely declaration that he intended to exceed such limitations, as provided in paragraph (1).

"(3) Each candidate for election to the Senate of the United States shall notify the Commission and each other candidate for the same election within forty-eight hours after such candidate, or any of the authorized committees of such candidate—

"(A) makes any expenditure, or incurs any obligation to make an expenditure, in excess of the limitation on expenditures contained in section 315(j) of this Act; or

"(B) receives any contribution which, when added to the total amount of contributions received by such candidate and the authorized committees of such candidate, exceeds the amount of the limitation on expenditures contained in section 315(j)(1) of this Act.

"(4) The Commission is authorized to determine, upon its own initiative or upon the request of any candidate for election to the Senate of the United States, whether any candidate has made expenditures or incurred obligations to make expenditures in excess of the limitations contained in section 315(j) of the Act, or has received contributions in excess of the limitation contained in section 315(j)(1) of this Act.

"(b) The limitation on expenditures contained in section 315(j)(1) of this Act shall not apply to any candidate for election to the Senate of the United States if any other candidate in the same election—

"(1) fails to file with the Commission a timely declaration as provided in paragraph (1) of subsection (a); or

"(2) files with the Commission a notice as provided in paragraph (2) of subsection (a); or

"(3) is required to notify the Commission in connection with the making of expenditures or the receipt of contributions as provided in paragraph (3) of subsection (a).

"(c)(1) Any person who makes independent expenditures, as defined in section 301(17) of this Act, or incurs costs of communication, required to be reported under section 301(9)(B)(iii) of this Act shall notify the Commission not later than forty-eight hours after such person first makes such independent expenditures or incurs such costs of communication aggregating more than $5,000, and thereafter shall so notify the Commission each time such person makes any additional independent expenditure, or incurs any such additional costs of communication, aggregating $5,000 or more.

"(2) If, with respect to an election, independent expenditures, as defined in section 301(17) of this Act, are made, or costs of communication, required to be reported under section 301(9)(B)(iii) of this Act, are incurred, aggregating more than one-third of the limitation on expenditures in section 315(j)(1) of this Act, the Commission shall, with respect to such election, suspend the limitation on expenditures established in such section 315(j)(1) at the request of any candidate in such election who is eligible to receive payments under section 502, and who has received the benefit of no more than one-third of such independent expenditures or costs of communication.

"(d)(1) The provisions of section 503(d) shall not apply to a candidate who elects to receive payments under this subchapter if the expenditure limitation contained in section 315(j)(1) of this Act is made inapplicable to such candidate under subsection (a), (b), or (c) of this section.

"(2) The additional amount to which a candidate is entitled under this subsection shall be based only upon the amount of contributions received after the date on which such expenditure limitation is made inapplicable, except that any contribution which is received from an individual after the date on which the limitation on expenditures is made inapplicable shall be considered as a contribution from an individual who has not previously made a contribution to such candidate.

"(3) The additional amount to which a candidate is entitled under this subsection shall not exceed 50 per centum of the amount of the expenditure limitation under section

315(j)(1) of this Act which would otherwise apply to such candidate.

"CERTIFICATIONS BY COMMISSION

"SEC. 505. (a) No later than forty-eight hours after a candidate files a request with the Commission to receive payments under section 506, the Commission shall certify the eligibility of such candidate to the Secretary of the Treasury for payment in full of the amount to which such candidate is entitled. The request referred to in the preceding sentence shall contain—

"(1) such information and be made in accordance with such procedures as the Commission may provide by regulation; and

"(2) a verification signed by the candidate and the treasurer of the principal campaign committee of such candidate stating that the information furnished in support of the request, to the best of their knowledge, is correct and fully satisfies the requirements of this subchapter.

"(b) Initial certifications by the Commission under subsection (a), and all determinations made by it under this subchapter, shall be final and conclusive, except to the extent that they are subject to examination and audit by the Commission under section 507 and judicial review under section 511.

"(c) Any candidate who knowingly and willfully submits false information to the Commission under this section shall be punished as provided in section 512.

"PAYMENTS TO ELIGIBLE CANDIDATES

"SEC. 506. (a) The Secretary of the Treasury shall maintain in the Presidential Election Campaign Fund established by section 9006(a) of the Internal Revenue Code of 1954, in addition to any other accounts he maintains under such section, a separate account to be known as the Senate General Election Campaign Account. The Secretary shall deposit into the account, for use by candidates eligible for payments under this subchapter, the amount available after the Secretary determines that amounts in the fund necessary for payments under subtitle H of the Internal Revenue Code of 1954 are adequate. The moneys in the account shall remain available without fiscal year limitation.

"(b) Upon receipt of a certification from the Commission under section 505, the Secretary of the Treasury shall pay the amount certified by such Commission out of the account to the candidate to whom the certification relates.

"(c) Payments received under this section shall be used only to defray election campaign expenses incurred with respect to the period beginning on the day after the date on which the candidate qualifies for the election ballot under the law of the State involved, and ending on the date of the election, or the date on which the candidate withdraws from the campaign or otherwise ceases actively to seek election, whichever occurs first. Such payments shall not be used (1) to repay any loan to any person, or (2) to make any payments, directly or indirectly, to such candidate or to any member of the immediate family (as defined in section 315(j)) of such candidate.

"(d)(1) If the Secretary of the Treasury determines that the moneys in the account are not, or may not be, sufficient to pay the full amount of entitlement to all candidates eligible to receive payments, he shall reduce the amount to which each candidate is entitled under section 503 by a percentage equal to the percentage obtained by dividing (A) the amount of money remaining in the account at the time of such determination by (B) the total amount which all candidates eligible to receive payments are entitled to receive under section 503. If additional candidates become eligible under section 502 after the Secretary determines there are insufficient moneys in the account, he shall make any further reductions in the amounts payable to all eligible candidates necessary to carry out the purposes of this subsection. The Secretary shall, by registered mail, notify the Commission and each eligible candidate of the reduction in the amount to which that candidate is entitled under section 503.

"(2) If, as a result of such reduction, payments have been made under this section in excess of the amount to which such candidate is entitled, that candidate is liable for repayment to the account of the excess pursuant to procedures the Commission shall prescribe by regulation.

"EXAMINATION AND AUDITS; REPAYMENTS

"SEC. 507. (a) After each Federal election, the Commission shall conduct a thorough examination and audit of the campaign expenditures of all candidates for Federal office who received payments under this subchapter for use in campaigns relating to that election.

"(b)(1) If the Commission determines that any payment made to an eligible candidate under section 506 was in excess of the aggregate amount of the payments to which such candidate was entitled, the Commission shall notify such candidate, and such candidate shall pay to the Secretary of the Treasury an amount equal to the excess amount. If the Commission determines that any portion of the payments made to a candidate under section 506 to be used in such candidate's general election campaign was not used to make expenditures in connection with such campaign, the Commission shall notify the candidate of such determination and such candidate shall pay to the Secretary an amount equal to the amount of the unexpended portion. In making its determination under the preceding sentence, the Commission shall consider all amounts received as contributions to have been expended before any amounts received under this subchapter are expended.

"(2) If the Commission determines that any amount of any payment made to a candidate under section 506 was used for any purpose other than to defray campaign expenditures, it shall notify the candidate of the amount so used, and the candidate shall pay to the Secretary of the Treasury an amount equal to such amount.

"(3) No payment shall be required from a candidate under this subsection in excess of the total amount of all payments received by the candidate under section 506 in connection with the campaign with respect to which the event occurred which caused the candidate to have to make a payment under this subsection.

"(c) No notification shall be made by the Commission under subsection (b) with respect to a campaign more than 18 months after the day of the election to which the campaign related.

"(d) All payments received by the Secretary under subsection (b) shall be deposited by him in the account.

### "OTHER POWERS AND DUTIES OF THE COMMISSION

"SEC. 508. (a) The Commission is authorized to conduct examinations and audits, in addition to the examinations and audits under sections 505 and 507, to conduct investigations, and to require the keeping and submission of any books, records, or other information necessary to carry out the functions and duties imposed on it by this subchapter.

"(b) The Commission shall consult from time to time with the Secretary of the Senate, the Clerk of the House of Representatives, the Federal Communications Commission, and other Federal officers charged with the administration of laws relating to Federal elections, in order to develop as much consistency and coordination with the administration of those other laws as the provisions of this subchapter permit. The Commission shall use the same or comparable data as that used in the administration of such other election laws whenever possible.

"REPORTS TO CONGRESS

"SEC. 509. (a) The Commission shall, as soon as practicable after the close of each calendar year, submit a full report to the Senate setting forth—

"(1) the expenditures incurred by each candidate, and the authorized committees of such candidate, who received any payment under section 506 in connection with an election;

"(2) the amounts certified by it under section 505 for payment to that candidate; and

"(3) the amount of payments, if any, required from that candidate under section 507, and the reasons for each payment required.

Each report submitted pursuant to this section shall be printed as a Senate document.

"(b) The Commission shall submit, not later than March 1 of each year immediately following a year in which any Federal election is held, a special report to the Senate setting forth—

"(1) the amounts certified by it under section 505 of this subchapter and sections 9005, 9008, and 9036 of the Internal Revenue Code of 1954 for payments from the Presidential Election Campaign Fund;

"(2) the amount of money remaining in the fund at the end of the calendar year in which any Federal election is held;

"(3) an estimate of the amount of money which will be transferred to such fund during each of the four calendar years immediately following the year in which any Federal election is held; and

"(4) an estimate, to the extent practicable, of the amount of money necessary to make all payments to which eligible candidates and the national committees of each political party will be entitled with respect to the next two Federal elections to be held.

### "PARTICIPATION BY COMMISSION IN JUDICIAL PROCEEDINGS

"SEC. 510. (a) The Commission is authorized to appear in and defend against any action filed under section 511, either by attorneys employed in its office or by counsel whom it may appoint without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and whose compensation it may fix without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title.

"(b) The Commission is authorized to appear, through attorneys and counsel described in subsection (a), in the district courts and other appropriate courts of the United States to seek recovery of any amounts determined to be payable to the Secretary of the Treasury as a result of any examination and audit made pursuant to section 507.

"(c) The Commission is authorized to petition the courts of the United States for declaratory or injunctive relief concerning any civil matter arising under this subchapter, through attorneys and counsel described in subsection (a). Upon application of the Commission, an action brought pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28, United States Code, and any appeal from the determination of such court shall lie to the Supreme

Court of the United States. Judges designated to hear the case shall assign the case for hearing at the earliest practicable date, participate in the hearing and determination thereof, and cause the case to be in every way expedited.

"(d) The Commission is authorized on behalf of the United States to appeal from, and to petition the Supreme Court of the United States for certiorari to review judgments or decrees entered with respect to actions in which it appears pursuant to the authority provided in this section.

### "JUDICIAL REVIEW

"SEC. 511. (a) Any certification, determination, or other action by the Commission made or taken pursuant to the provisions of this subchapter shall be subject to review by the United States Court of Appeals for the District of Columbia Circuit upon petition filed in such court by any interested person. Any petition filed pursuant to this section shall be filed within thirty days after such certification, determination, or other action by the Commission.

"(b)(1) The Commission, the national committee of any political party, and any individual eligible to vote for a candidate for the office of Senator of the United States are authorized to institute an action under this section, including an action for declaratory judgment or injunctive relief, as may be appropriate to implement or construe any provision of this subchapter.

"(2) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this subsection and shall exercise such jurisdiction without regard to whether a person asserting rights under the provisions of this subsection shall have exhausted administrative or other remedies provided at law. Such proceedings shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28, United States Code, and any appeal shall lie to the Supreme Court of the United States. Judges designated to hear the case shall assign the case for hearing at the earliest practicable date, participate in the hearing and determination thereof, and cause the case to be in every way expedited.

### "PENALTY FOR VIOLATIONS

"SEC. 512. Violation of any provision of this subchapter is punishable by a fine of not more than $10,000, or imprisonment for not more than five years, or both.".

### LIMITATIONS ON EXPENDITURES IN SENATE GENERAL ELECTION CAMPAIGNS

SEC. 3. (a) Section 315 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a) is amended by adding at the end thereof the following:

"(i) For purposes of this section expenditures made on behalf of any candidate (as determined under section 315(b)(2)(B)) for the office of Senator of the United States shall be considered to be expenditures made by such candidate.

"(j)(1) Except as otherwise provided in section 504 of this Act, a candidate who receives payments for use in his general election campaign for the office of Senator of the United States, pursuant to section 506 of this Act may not make expenditures in such campaign in excess of $250,000, plus 15 cents multiplied by the voting age population, as certified under subsection (e), of the State in which the election is held.

"(2) For purposes of the limitation on expenditures contained in paragraph (1), only that percentage of an expenditure by a candidate or the authorized political committees of such candidate for broadcasting time which represents the cost to such candidate or committees of transmitting the material broadcast to the State in which such candidate is seeking election shall be taken into account.

"(3) A candidate who receives payments under section 506 of this Act for use in his general election campaign for the office of Senator of the United States may not make expenditures in such campaign from his personal funds or from the personal funds of his immediate family in excess of $35,000. For the purposes of this subsection, the term 'immediate family' means a candidate's spouse, and any child, parent, grandparent, brother, half-brother, sister, or half-sister of the candidate, and the spouses of such persons.".

(b) Section 315(c)(1) is amended by striking out "subsection (b) of this section and subsection (d) of this section" and inserting in lieu thereof "subsections (b), (d) and (j) of this section".

(c) Section 315(c)(2)(B) of such Act (2 U.S.C. 441a(c)(2)(B)) is amended by inserting before the period a comma and "except that with respect to the limitation established by subsection (j) the term 'base period' means the calendar year of 1982".

### EFFECTIVE DATE

SEC. 4. The amendments made by this Act shall become effective on January 1, 1987, and shall apply to campaigns for election to the United States Senate after such date.

### AUTHORIZATION OF APPROPRIATIONS

SEC. 5. There is authorized to be appropriated to the Federal Election Commission the sum of $900,000 for purposes of carrying out the provisions of this Act during the fiscal year 1984.

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# APPENDIX 2

Federal Election Commission,
*Washington, DC, April 21, 1986.*

Hon. Charles McC. Mathias, Jr.,
*Chairman, Committee on Rules and Administration, U.S. Senate, Washington, DC.*

Dear Mr. Chairman: This responds to your letter of April 8, inviting comments from the Federal Election Commission on three proposals to amend the campaign finance laws.

As an independent, bipartisan agency charged with administration and enforcement of the law, the Commission has a general policy of not taking a position on the substance of proposed legislation. We do, however, endeavor to point out areas of potential administrative and financial concern. Our comments on each of the three bills will thus be limited. Under each proposal, Commission costs are likely to increase. However, we are unable to provide at this time a detailed accounting of the additional funds or personnel required.

S. 1787, the proposed "Senatorial Election Campaign Act," would add a new Chapter III to the Federal Election Campaign Act, providing for public funding of Senate general election campaigns. Candidates running in states with less than 1 million voting age population would be entitled to receive $500,000; 50 cents per voter would be provided in states having less than 3 million voters, and 30 cents per voter would be available in states with over 3 million voters, with a minimum entitlement of $1.5 million in those states. Money would come from the Presidential Election Campaign Fund and would be available if at least 2 major party candidates or a major and minor party candidate qualified for the general election ballot. Recipients could not exceed the specified spending limits and would have to agree not to use more than $20,000 in personal funds. An eligible candidate whose opponent elected not to accept public funding would be entitled to additional public funds in an amount equal to the amount by which the opponent exceeded the expenditure limits. Entitlements would be adjusted for inflation every 2 years. The FEC would be required to audit each recipient.

The Commission's primary concerns regarding S. 1787 relate to financial viability of the Fund and impact on our budget. Senate candidates could receive public funding only to the extent that resources in the Presidential Election Campaign Fund were sufficient to meet the needs of presidential candidates. We anticipate a presidential contest in 1988, where as many as 20 candidates may qualify for public funds, possibly rendering the Senate public financing program unworkable due to insufficient funds. Further, Senate races occur in one-third of the States every two years, so that public money provided Senate candidates in non-presidential years could deplete the resources available in the Presidential Election Campaign Fund.

While not included in this year's submission, the Commission has previously suggested that the law be amended to provide for an alternative source of funds for the Presidential Election Campaign Fund should amounts raised by the dollar check-off prove insufficient. Senate campaign demands on the Fund would increase the likelihood of a shortfall.

Substantial additional appropriations would be required to properly implement S. 1787. The most notable example is in the audit area. Eligibility determinations and certifications would have to be made within specific time limits. Every two years, 50 to 70 Senate campaigns across the country would need to be audited in detail to assure accountability for public funds. Computer resources would have to be devoted to the program. Both regulatory and enforcement workload would increase as guidelines were developed and compliance monitored. All of these activities would be in addition to existing Commission responsibilities and budget capabilities.

S. 1806, the proposed "Campaign Finance Reform Act" would raise individual contribution limits to $1,500 and lower multicandidate committee contributions to $3,000 per election. The most a candidate could receive from political action committees in an election cycle would be $100,000 for House campaigns ($125,000 if there was a contested primary). Senate candidates would be limited to between $150,000 and $750,000, depending on the size of the state. All "bundled" contributions would be charged against the conduit's contribution limits, as well as the original donors. Free broadcast time would be provided to candidates attacked in commercials by independent expenditure groups.

The limitations on aggregate receipts from certain types of committees imposed by S. 1806 would be unlike those included in current law. Additional money and staff would be required to monitor the aggregations and enforce adherence to the new requirements. As with S. 1787, further demands would be placed on the Commission's audit, data, regulatory and enforcement functions.

S. 1891, the "Comprehensive Campaign Reform Act of 1985" would remove limits on donations to party committees for administration and solicitation expenses and ease restrictions on political party activities. Committees established to draft candidates would be covered by the FECA limits. A private cause of action would be created for persons harmed by improper use of information taken from reports. Affidavits would be required of report users and the FEC would have to notify committees whose reports were reviewed by any outside person. The Commission would be required to set time limits on investigations, update a quarterly MUR index, notify potential respondents, and provide for hearings before a finding of probably cause. Civil penalties would be prohibited except for knowing and willful violations. FEC audit procedures would have to be published.

The Commission would first like to note that the section of S. 1891 bringing committees established to draft candidates under the auspices of the Federal Election Campaign Act is consistent with prior FEC recommendations to Congress. Certain other of the bill's provisions, however, are of concern to us.

There is no current requirement that users of our Public Records, Press or Information Offices either identify themselves to the Commission or indicate the documents being inspected. Over 6 million pages of reports and documents were available for public review at the Commission at the end of 1985. In that non-election year, nearly 10,000 political committees filed approximately 20,000 reports and statements. 15,000 people were served by the Public Records Office. The Press Office dealt with 9,700 callers and visitors and Public Information staff handled over 50,000 telephones inquiries. Given this great volume, obtaining affidavits from users and notifying committees that their reports had been reviewed would be administratively difficult and quite costly.

Current law provides protection against undue Commission delay by permitting complainants to challenge in court failure to take final action within 120 days. Any time limits on investigations should take into account mandated procedural steps in enforcement actions. Such limits should also be balanced with the need for the Commission to properly address complex cases and the occasional use of dilatory tactics by respondents.

The provisions of S. 1891 limiting use of civil penalties and requiring publication of audit procedures could impact FEC compliance efforts. As a result of the Federal Election Campaign Act Amendments of 1979, the Commission may only audit committees failing to meet threshold requirements for substantial compliance. The Commission has repeatedly resisted requests to make public its audit procedures on the grounds that such action would give notice of thresholds below which no enforcement action was likely. The need for such confidentiality has been upheld by the courts.

The Commission appreciates the opportunity provided by the Committee on Rules and Administration to offer comments on these bills. We look forward to appearing before the Committee on April 23rd to testify in support of our Fiscal Year 1987 authorization request.

Sincerely,

JOAN D. AIKENS,
*Chairman.*

# APPENDIX 3

## Prepared Statement by Joseph J. Fanelli, President, Business-Industry Political Action Committee

Mr. Chairman, the Business-Industry Political Action Committee, founded in 1963, is an independent PAC which seeks to elect candidates to the Senate and House of Representatives who understand and strongly support our private enterprise system, and who are adherents of policies fostering economic growth and fiscal responsibility. BIPAC is non-partisan, does not lobby and represents business and industry broadly. It is not the arm of any specific business or industry.

On the third day of December, 1985, the Senate, in one impetuous act, almost approved far-reaching changes in our campaign finance laws, including a cut-back in the amount a PAC could give to a candidate and establishing a limit on how much a candidate could accept from PAC sources.

That was done when an amendment, embodying the changes now proposed in the Boren Bill (S. 1806), was almost adopted on the Senate floor, with only a minimum of debate and with no prior consideration by committee. The vote was sidetracked with the promise of Senate Rules Committee consideration this year, but the vote-counters estimated that it probably would have been approved had it been voted on at that time.

Some of the feelings expressed at that time gave evidence of the growing frustration among members of the Senate on this subject, although the frustrations spring from many sources. Some Senators are rebelling at the high costs of campaigns, some believe PACs are corrupting the system, some are simply tired of having to solicit large amounts of cash to run for office. For some, the views are based on hearsay or inuendo which pass as proof that the current system needs to be replaced.

### FICTIONAL PROBLEMS IN OUR PRESENT SYSTEM

It is charged that congressional votes are bought and sold with PAC contributions as the medium of exchange. Where is the proof? Where have specific allegations been made, let alone verified?

There is that special brand of false syllogism which proceeds in this manner; first, several members of a House or Senate Committee voted for certain legislation; second, a PAC that was interested in that legislation made contributions to several of those members; third, therefore (as though it were proven beyond a doubt) their votes had been "bought" by campaign contributions.

It is charged that PAC contributions have caused the inflation of campaign costs. Rather, the elements that go into a campaign these days cost considerably more than ever: media, printing, postage, travel, salaries, telephones, computers, the need to engage the professional services of campaign consultants, lawyers and accountants in order not to run afoul of the Federal Election Committee. Then there are the wealthy candidates who are willing to spend millions and millions of dollars of their personal fortune in their own campaigns.

Another misconception is that PACs give very large sums of money to candidates. First, there is the legal limit of $5,000 per candidate, per race. But very few PACs have the resources to give the maximum in very many races. Based on our 1985 survey of business employee PACs contributing in the 1983–84 election cycle, of those responding, the average business employee PAC gave a total of $47,194 to congressional candidates. Eighty-seven percent of the business employee PACs contributed under $100,000.

Our survey also showed the average business employee PAC's contribution to House candidates was $295; the average to Senate candidates was $1,103. Are such modest amounts going to "buy" influence with candidates whose campaigns cost many, many times those amounts? And even if the average were considerably higher, where is the justification to presume that members of the House and Senate could be "bought?" Is it accurate or fair to imply that every member has his or her "price?"

It also has been charged that the contributions of PACs are responsible for keeping incumbents in office and insulating them from the voters. For several decades over 90 percent of House incumbents have been getting reelected. So this phenomenon began long before the proliferation of PACs came about. The record for Senate incumbents contrasts with that of the House; there is much more turnover. As recently as 1980 only 56 percent of the Senators seeking reelection were successful.

Contributors to PACs are said to be coerced into giving. Again, where is the proof? The participation rate of employees in most business-related PACs according to our survey is only about 31 percent, which would indicate a purely voluntary process.

PACs are said to dominate the elections for Congress. Is that possible when the total contributions of all PACs still amount to less than 30 percent of the money spent in congressional campaigns? This includes all PACs—business, labor, membership, ideological, non-connected, trade and professional associations, etc. They serve many different purposes, many conflicting purposes. Their force is diffused; their voice is muted.

Still the critics continue to talk as if all of the varieties of PACs had just one purpose and one clearly defined course of action.

That is patently false.

To continue to lump all PACs together can only be done for purposes of propaganda; it cannot be excused on grounds of ignorance.

Mr. Chairman, I repeat all of this with some degree of frustration. These facts have been told many times before. But the drumbeat of allegations continues, and it seems there are so many whose minds are made up and who refuse to be bothered about the facts.

## THE MATHIAS PROPOSAL (S. 1787)

Based upon recent hearings on the subject of election campaign financing, it is apparent, Mr. Chairman, that it is the desire of some committee members and of some of the witnesses that the Senate move toward the adoption of "public financing," that is, taxpayer funding of congressional elections, as is envisioned in your bill, S. 1787, or toward adoption of S. 1806, the proposal of Senator David Boren (D-OK) that would place further restrictions on contributions from political acton committees.

We at BIPAC are opposed to public, or taxpayer, financing of election campaigns on both theoretical and practical grounds and we have testified several times before House and Senate Committees expressing our opposition.

We believe that our political system is predicated on the personal involvement of individuals, and anything that would weaken the prerogatives or incentives for individual voter participation would in turn weaken our democratic system.

We believe all citizens have the right to devote time, talent and/or resources to help elect candidates of their choice. Some may choose to do this by going door-to-door distributing information about favorite candidates or by the time-honored "stuffing of envelopes" at campaign headquarters. Others may devote special talents writing speeches and press releases, designing campaign literature, or speaking; still others may offer their accounting or computer skills and many others, whose time and talents are directed otherwise, may wish to provide financial resources to help support those candidates whose views they share.

This is a basic, fundamental right in our participatory democracy.

So is the right to join with other like-minded citizens to support certain candidates or groups of candidates, whether in a political party, a club or organization, a political action committee or an ad hoc group.

We are always mystified that some people purport to see this basic American exercise—which is essential to our system—as somewhow undermining our electoral process.

To deny citizens this right, or to supplant it with federal funds taken from taxpayers, violates the electoral system on which this Nation was founded.

We also believe it is fundamentally wrong to take tax revenues derived in part from "Citizen Jones" to give financial support to "Candidate Smith," whom Jones would never support of his own volition.

We further believe that pubic (taxpayer) financing, even "partial" financing, would tend to decrease individual participation in the political process. Surveys taken among PAC contributors, for instance, have reported repeatedly that persons are drawn into political involvement, in part, by means of participation in political action committees. The PACs help to educate voters, about candidates, issues and forthcoming elections; they stimulate their interest. Similiarly, the ability of individuals to make a financial contribution directly to the candidates of their choice fosters their interest in participating further in the electoral process.

There also are practical problems concerned with taxpayer financing of elections. Faced with the present federal deficit, and the cutbacks taking place in many segments in government, this is hardly the time to adopt a new area of public expenditures. The private sector can and is providing campaign financing.

The Federal Election Commission, still virtually overwhelmed with the administrative burden imposed by the presidential and congressional finance laws, would be completely overwhelmed if it were also given responsibility for funding and monitoring congressional races, in which thousands of candidates would be seeking nomination and election to office.

We also believe the availability of public funds would encourage some candidates to run for office whose qualifications are so meager that they would never run if they had to rely on voluntary contributions. Candidates who never could hope to attract sufficient support to compete because of their lack of qualifications and/or extreme views, surely would be tempted if they could get publicly-funded support in the primary or in the general election.

Moreover, public opinion surveys have shown general opposition to taxpayer financing of congressional campaigns, but proponents apparently refuse to accept these results with which they do not agree.

It also has been pointed out that the economic, demographic and geographical makeup of congressional districts and states differ greatly; the financial needs for effective campaigning vary greatly, for instance, from a rural district with few media outlets and an urban district in the midst of a high-priced media market. No one has produced a formula for allocating funds from the Federal Treasury which would remotely approach fairness on this score.

Notwithstanding all these facts, taxpayer financing is still offered by some as a panacea for problems in the current congressional campaign financing system, some of which are real and many of which are totally fictional.

## THE BOREN PROPOSAL (S. 1806)

As for the proposed election reform embodied in S. 1806 introduced by U.S. Senator David L. Boren (D-OK), it too should be considered carefully becuase it has inherent flaws.

Whatever may be causing the frustration of some Senators, the quick-fix of the Boren Bill is no fix at all. The hypocrisy of the situation is clear when it is noted that of twenty-seven Senators seeking reelection in 1986, sixteen of them by November, 1985 had collected contributions from PACs in excess of what they would be allowed under the Boren Bill. Of course, if approved, the limits would not apply until the 1987-1988 election cycle, but what does this say about the fairness or appropriateness of the proposed limits?

Candidates also would find they would have to do some balancing and fancy footwork if the new limits were adopted. Would a candidate simply accept contributions from all PACs on a first offered—first accepted basis until the limit was reached, and then refuse support from other political action committees? Or would they attempt to allocate their PAC receipts, to allow contributions from all PACs which might wish to give to a particular campaign? Would House incumbents who later announce for the Senate have two limits?

Of course the bill does not propose a limit on what PACs themselves can receive or spend, which according to current Supreme Court decisions cannot be limited. So what would the big PACs do? First, they would be able to get in early and at their maximum perhaps foreclosing opportunities for the smaller PACs to give. Next, the largest PACs, not being able to contribute all their resources directly to candidates, probably would resort to independent expenditures, using media advertising and mailings, etc. to support the candidates of their choice, or, in some cases, to attack those they would like to defeat.

We know that congressional candidates are very leery of independent expenditures—and rightfully so. Most candidates are concerned that "independent expenditure attacks" on their opponents may well backfire against them. As for positive support, they are afraid that some well-meaning supporters may focus voter attention on issues that the candidates do not care to emphasize.

Candidates are entitled to adopt their own campaign strategies, good or bad, wise or foolish. An increase in independent expenditures by PACs (or individuals, for that matter) undermines the ability of each candidate to devise and implement his or her own plan for presenting himself or herself to the voters.

As for the proposed reduction of the present $5,000 limit for PACs to the $3,000 level, this would affect very few PACs, as the average of PAC contributions to candidates is well under that figure. And, as we've pointed out, the larger PACs would simply resort to independent expenditures.

The one aspect of the Boren Bill BIPAC would endorse is to increase the limit on what individuals my contriubte to candidates. This would allow more resources to flow into campaigns from individuals, off-setting to some extent the amounts coming from PACs.

### STRENGTHENING THE ROLE OF INDIVIDUALS AND PARTIES

If there is, in fact, a growing perception that political action committees may be gaining an undue influence in campaign financing and if this, in fact, is determined to be generating cynicism and a dangerous loss of confidence in the political process by the general public, then this may be addressed by legislation that would strengthen the two other principal sources of campaign funding—individuals and political parties.

In this event, BIPAC suggests the following modifications in the law be considered:

(1) Increase the present $1,000 indivdiual limit per candidate per race specified in the current law.

(2) Increase the present $25,000 aggregate limit that each individual may contribute in each calendar year.

(3) To strenghten political parties, allow individuals to contribute to their party a greater amount than the current limit of $20,000 per year. Also, allow PACs to contribute more to political parties than the present maximum of $15,000 per year.

(4) Allow political parties to give greater support to their respective candidates for the U.S. Senate and House of Representatives.

### PROBLEMS IN THE U.S. ELECTION SYSTEM

Mr. Chairman, there are several areas of legitimate concern with regard to our electoral system in addition to the cost of campaigns and the proper role of political action committees.

Here are some areas that I believe need to be studied:

(a) Poor voter turnout.

(b) The substantial advantage incumbents have over challengers; i.e. the franking privilege, newsletters, staff, etc.

(c) The setting up of PACs by Senators and Members of the House for the purpose of distributing funds to colleagues.

(d) The setting up of PACs by Presidential candidates for the ostensible purpose of contributing to Senatorial and Congressional campaigns but which actually are used in support of their own presidential candidacies.

(e) The "privilege" of Members of the House who were elected before the 1980 election to convert left-over campaign funds to personal use.

### ELECTION PRACTICES SHOULD BE REVIEWED IN TOTO

From the above list of problem areas, which certainly is not exhaustive, it would seem a thorough review of the way in which our Congress is elected would be desirable. Preferably it should be done by a mix of persons who are not themselves directly part of the process and by those in the process; it should be a truly objective, impartial assessment of current practices and what might be done to remedy shortcomings.

Studies by appointed commissions, even so-called "blue ribbon" groups, tend to be downgraded by the cynical. Too often they conclude with reports of the obvious and with recommendations that are impractical or unachievable.

In this case, a commission might do much to clear the air. I believe an objective study of campaign finance would conclude, as many have, that PACs are a positive force in the electoral system—the means by which millions of Americans have been brought into the political process and whose awareness and commitment have been enhanced. I think the supposed corrupting influence of PACs would be shown to be non-existent.

The report of such a Commission would likely conclude that the present reporting and disclosure requirements of the Federal Election Commission have produced a system where campaign giving and spending are better known than ever before, and that any proposed changes should be weighed carefully to be sure they will not do more harm than good.

Of course the posssibility of public or taxpayer financing of Congressional elections also should be reviewed. Public opinon surveys continue to show that the voters reject this alternative by better than 60 percent. It has had its "never-say-die" advocates for a decade, but they have failed to rally public support for the idea. And the Congress has rejected it whenever it has been presented for a vote.

Taxpayer funding has serious flaws and should bear the most careful study.

Picking on PACs is a favorite sport for some critics, but it does not address the real problems in our system. I urge the Senate Rules Committee to look at the total picture, and not tinker with just one element that is working well.

Mr. Chairman, I would strongly recommend that the committee give consideration to supporting the creation of a commission to review these problems and to suggest appropriate remedies.

# FACTS ABOUT BUSINESS EMPLOYEE POLITICAL ACTION COMMITTEES

## Results of a Survey • 1985

## Background

In keeping with a practice begun after the 1980 elections, a group of the country's leading business organizations joined together in 1985 to underwrite a nationwide survey of business employee political action committees (PACs). As in the past, the purpose was to elicit information needed to respond to inquiries from the organizations' members, the media, legislators and the political action committees themselves to fill in gaps in Federal Election Commission statistics. Those statistics neither explain the internal practices of PACs nor answer questions asked frequently by PAC managers.

Since the surveys were launched five years ago, the results have been tabulated by Civic Service, Inc., of St. Louis and Washington, D.C., a prominent public opinion polling organization specializing in surveys keyed to political questions.

Initially, there were four survey sponsors: the Business-Industry Political Action Committee, the National Association of Business Political Action Committees, the National Association of Manufacturers, and the Public Affairs Council. After the 1984 elections, the Chamber of Commerce of the United States joined in sponsoring the survey.

Each survey of PAC activity during a two-year election cycle has produced much new data from cross-sections of business employee political action committees. Each has resulted in information that dispels common misperceptions about what PACs are and the role they play in the political process. Each survey has confirmed that voluntary participation in business employee—or corporate—PACs is bringing thousands of new participants into the political process, *not* narrowing the scope of political givers.

To the fullest extent possible, the same questions have been asked in each of the three surveys. Questionnaires drafted by the sponsors have been reviewed by Civic Service, Inc., which has received all responses and tabulated all of the results.

The facts brought out by the surveys show that business employee PACs are important players in free, competitive elections . . . and that the PAC movement has matured into a permanent force in American politics.

### Survey Participants and Their Contributions

In the 1981 survey, 275 business employee political action committees responded to questions. In 1983, the figure was 301, and in 1985, 268.

(According to the Federal Election Commission, the total number of business employee PACs making contributions to federal candidates during the 1983–84 election cycle was 1,508. In our surveys, financial institutions have been excluded in order to derive information on those business entities that are more likely to solicit contributions and to provide assistance on a nationwide rather than regional basis. Accordingly, questionnaires were sent to all corporate PACs, excluding those of financial institutions.

The 1985 survey of business employee PAC participation in the 1983-84 election cycle covered PACs with a total of 113,993 individual voluntary givers—an average of 425 members per PAC.

Contributions from the 268 PACs during the 1983–84 cycle totalled $12,648,055, or roughly $47,194 per PAC. FEC figures show that *all* corporate PACs—that is, the full 1,508, including those of financial institutions—contributed a total of $35.3 million to federal candidates during the 1983–84 cycle. Thus, this survey represents one-third of the total dollars given by political action committees in the corporate category. The results can be viewed as a representative cross-section.

### Facts From the Survey

FACT: Business employee (corporate) PACs are important participants in congressional elections, but they are by no means a dominant force. According to FEC reports, 3,006 PACs contributed to federal candidates during the 1983-84 election cycle. Of these, 1,508 were listed in the corporate category.

- Business employee PACs provided congressional candidates with $35.3 million in contributions during the two-year cycle—or 8.9 percent of the average candidate's receipts.
- The average business employee PAC in the 1985 survey contributed $47,194 to U.S. House and Senate candidates during the 1983–84 cycle. Eighty-seven percent of the business employee PACs contributed under $100,000.

- The average business employee PAC's contribution to House candidates was $295; the average contribution to a Senate candidate was $1,103. Over 90 percent of the donations to House candidates were under $1,000; over 70 percent of those to Senate candidates were under $1,000.
- A total of 2,035 candidates sought House and Senate seats in 1983-84. The average PAC responding to the 1985 survey supported only 39 federal candidates. Fewer than 5 percent contributed to more than 200 candidates.

FACT: Business employee PACs are broad-based entities, representing hundreds of managerial and executive employees.

- The average PAC received donations from 432 individuals during the 1983-84 election cycle.
- More than two-thirds of the PACs surveyed had more than 100 contributors.

FACT: PACs are voluntary employee funds. Nearly all managerial employees are given an opportunity to participate.

- More than 60 percent of the PACs surveyed in 1985 solicit 100 percent of executive personnel.
- The average PAC solicited 88 percent of executive and managerial employees, 31 percent of whom chose to contribute during the two-year period.

FACT: Those individuals who participate in PACs make modest contributions within the range of the average political giver.

- More than 60 percent of the individual contributions are under $100 per year.
- The average individual contribution during the 1983–84 cycle was $224, or $112 per year.
- PAC participants have the opportunity to make contributions through payroll deductions in 79 percent of the respondent PACs.

FACT: Contributors to PACs have a great deal to say about where their money is spent in elections.

- An employee committee determines where contributions are to be made in 98 percent of the respondent PACs.
- Fewer than 2 percent of the PACs surveyed indicated that top management or the Washington office makes the decisions on candidate support.

FACT: Business employee PACs are managed at headquarters or plant facilities—not in Washington.

- More than half of the corporations responding to the survey do not have Washington offices.
- More than 40 percent never give to Washington fundraising events.

FACT: PACs regularly provide information to participants.

- More than 85 percent of those surveyed utilize regular communications with PAC members. Newsletters, annual reports, meetings and seminars are the most common methods used to keep members abreast of activities.
- 78 percent of the companies also offer political or economic education programs, voter registrations, information on political issues, or other public affairs efforts that supplement PAC activity.

FACT: Business employee PACs give political newcomers a chance to make their case with the voters, and they support the two-party system.

- One-fourth of the business employee PAC contributions went to candidates who were challengers or to those running in open seats during the 1983-84 cycle. Only 2 percent of the PACs gave all their donations to incumbents.
- The average political action committee surveyed gave 52 percent of its contributions to Republican

## IN BRIEF

| | 1983/84 | 1981/82 | 1979/80 |
|---|---|---|---|
| Average donation to a business employee PAC per person per year | $112.00 | $91.51 | $50.50 |
| Percent of executive and administrative personnel solicited | 88% | 78% | 64% |
| Percent of those solicited who actually contribute | 31% | 28% | 33% |
| Number of individual donors to the PAC | 425 | 311 | 388 |
| Average contribution to House/Senate candidates | H $295<br>S $1,103 | H $411<br>S $933 | H $471<br>S $824 |

candidates. Only 1.5 percent of the respondents gave all their money to Republicans.

- About 40 percent of the PACs made some contributions directly to political parties during the two-year cycle. The total amount contributed to the parties during that time was more than $900,000.

FACT: PACs are responsible participants in the political process, providing traditional, direct support to candidates without imposing their judgments on voters or candidates.

- Fewer than 2 percent of the respondents said they engaged in independent expenditures in behalf of or in opposition to selected candidates.
- Fewer than 8 percent of the respondents said they have provided in-kind assistance or services to candidates. More than 92 percent gave only direct dollars to campaign committees of congressional candidates.

*For further information, contact one of the following:*

**Business-Industry Political Action Committee**
1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 833-1880

**Chamber of Commerce of the United States**
1615 H Street, N.W.
Washington, D.C. 20062
(202) 463-5606

**National Association of Business Political Action Committees**
P.O. Box 30647
Oklahoma City, OK 73140
(405) 732-1478

**National Association of Manufacturers**
1776 F Street, N.W.,
Washington, D.C. 20006
(202) 637-3117

**Public Affairs Council**
1255 23rd Street, N.W., Suite 750
Washington, D.C. 20037
(202) 872-1790

# APPENDIX 4

## PREPARED STATEMENT OF THE AMERICAN OPTOMETRIC ASSOCIATION ON CAMPAIGN FINANCE REFORM

### STATEMENT ON CAMPAIGN FINANCE REFORM PROPOSALS

The American Optometric Association appreciates the opportunity to present testimony on pending legislative proposals to amend the Federal Election Campaign Act. AOA, which represents over 25,000 doctors, educators, and students of optometry, has a strong interest in encouraging participation in the political process. Because AOA actively promotes involvement in the political system, this topic is of particular concern.

Since 1975 AOA has had an affiliated political action committee known as AOA-PAC. Approximately 18 percent of our membership has contributed to AOA-PAC with the average contribution being $40.

AOA believes that PACs, and in particular AOA-PAC, serve an important and useful role in our political system. Contrary to popular opinion, PAC's are not evil, special interests out to ruin our democratic process. In fact, political action committees provide an opportunity to participate for millions of individuals who may not otherwise be part of our democratic process.

While some critics want to differentiate between participation by individuals and PAC's, the fact is that PAC's are no more than a group of individuals pooling their financial resources to express their common concerns. Candidates view contributions the same whether it comes from an individual or a PAC, but some individuals may not contribute at all if not through a committee.

PAC's provide a vehicle for significant grassroots participation in our democracy and ultimately they contribute to more involvement in the political process. With just over half of all registered voters voting in the last presidential election we believe that any method that encourages and increases involvement in the political process is vital to the continuing strength of our democracy. While contributing to AOA-PAC is just one method of political participation for our members, it is a popular, highly utilized method.

When examining the issue of campaign finance reform it is important to keep in mind that all PACs are not the same nor are they equal. In particular, we believe that our experience with AOA-PAC demonstrates the ability to create a democratically organized, grassroots organization which lives up to the best spirit of the Federal Election Campaign Act.

Last year over 3,500 doctors of optometry gave money to AOA-PAC. AOA-PAC contributed to 239 candidates for federal office. Contribution decisions are made by our PAC Board which is a geographically and politically balanced committee of optometrists. These figures indicate strong grassroots support for AOA-PAC and a continuing commitment by optometry to be involved in our political system.

While the hearings on campaign financing are examining several legislative proposals we would like to focus our comments on S. 1806, the Campaign Finance Reform Act sponsored by Senator Boren and Senator Goldwater. In particular, we will concentrate on provisions included in S. 1806 relating to limits on PAC contributions. Specifically, S. 1806 would:

Limit total PAC-contributions to House candidates to $100,000 (additional 25,000 permitted if the candidate faces opposition in both the primary and general election).

Limit total PAC contributions to a Senate candidate to $175,000 to $750,000 depending on the size of the state.

Reduce individual PAC contributions in each election for each candidate from $5,000 to $3,000.

While the intent of these limits is to put all PACs under the same rules, in reality we believe these proposed changes would significantly hurt small and medium-size PACs. By limiting the overall amount of PAC contributions a candidate can accept, the new rules would benefit large, well-financed PACs that could contribute early to numerous candidates. Once a candidate reaches the overall PAC limit, all other PACs would be excluded from contributing to that candidate. The ceiling on total PAC receipts could cause some PACs and their members to drop out of the political system entirely. Also, big PACs often have other ways of participating in an election, such as voter registration and membership communications, which would effectively circumvent the limits proposed.

Further, the proposed cap on PAC contributions would create an administrative nightmare for both candidates and PAC's. How will PAC's know when a candidate has reached his/her PAC threshold? Will PAC's be required to receive a formal notice of acceptance from a candidate for contributions made. Would candidates be required to accept PAC money on a "first-come" basis?

Similarly, while the expressed purpose of the proposed limits is to lower the impact of PACs on the political process, the new changes would likely increase the amount of independent PAC expenditures made on behalf of candidates. By lowering the amount PACs can directly contribute to a candidate, the new law would increase the pressure for making independent campaign expenditures. While candidates are held responsible for their own campaign financing, independent campaign contributions are not under a candidate's control. We believe it would not be in the public interest to lower the limit on direct PAC contributions while creating incentives for increasing independent PAC campaigns.

Also, lowering the current ratio between PAC contributions and individual contributions effectively discriminates against citizens who choose to participate in the political process by contributing to a political action committee. In order to qualify to be a federal PAC a committee must receive contributions from more than 50 members and make contributions to at least 5 candidates. Present law limits PAC contributions to federal candidates to $5,000 per election, while the limit on an individual contribution is $1,000 per candidate per election. The reason for this 5-1 ratio is that PACs represent the interests of a large group of individuals. The proposed changes in S. 1806 would increase the individual limit from $1,000 to $1,500, while lowering the PAC's limit from $5,000 to $3,000. This proposed change would value more highly contributions from wealthy individuals rather than groups of individuals who pool their resources to benefit candidates of their choice. We believe that would be an unwise and unfair policy.

In 1974, Congress amended the Federal Elections Act of 1971. This was done in response to the wrongdoings discovered in the wake of the Watergate scandal. In *Buckley* v. *Valeo,* the Supreme Court found a portion of the amendments unconstitutional because money in some instances can be regarded as speech; thus, it is protected under the First Amendment. The current debate over campaign financing, however, has not uncovered a similar harm occurring under present law. Supporters of this legislation have not presented substantial evidence that a significant problem exists.

AOA believes the most important component of any campaign finance law is full and timely disclosure. Current federal law already requires adequate reporting procedures to document where a candidate receives his campaign funds. Campaign financing today is more open to public scrutiny than ever before in this nation's history.

AOA appreciates the opportunity to present our views on this vital subject. We look forward to working with this Committee in developing legislation to improve our political process and the methods of campaign financing.

# APPENDIX 5

National Association of Realtors,
*Washington, DC, May 16, 1986.*

Hon. Charles McC. Mathias, Jr.,
*Chairman, Senate Committee on Rules and Administration,*
*Washington, DC.*

Dear Senator Mathias: The National Association of Realtors® represents over 700,000 members involved in all aspects of the real estate industry. We are affected by a broad range of federal policies and believe that it is important to express our views on those bills and proposals that could seriously affect our membership.

We would like to submit the attached Statement on Campaign Finance Reform. We hope that it can be included in the committee's published hearings.

Thank you.

Sincerely,

Clark E. Wallace,
*President.*

Enclosures.

## Statement on Campaign Finance Reform

In behalf of the more than 700,000 members of the National Association of Realtors®, the following testimony is submitted to the Committee on Rules and Administration regarding Congressional campaign financing.

The National Association of Realtors® represents professionals involved in all aspects of real estate. Our members are active and committed participant in their local communities. They serve in charitable organizations, on educational boards, and local government.

The Constitutional right to petition our government stands behind our efforts to help our members become involved in all levels of government. Our local, state and national associations have various programs to register voters, to provide forums for elected representatives, to volunteer personal time in campaigns, to educate voters on issues important to homeownership and the real estate industry, to support candidates for elected office, and to write, call and visit elected officials about legislative issues.

This background is to highlight the fact that NAR is a broad based organization that has an interest in issues. These issues can be specific or broad, and impact to varying degrees on the real estate industry. We are very grassroots oriented with a very politically active membership. Our members want to be heard and they demand from the Association's Leadership the tools and programs that enable them to be heard. Our REALTORS® Political Action Committee (RPAC) is just one of those tools.

What is RPAC? Originally organized in 1969, the committee has grown in conformity with changes in election laws to where we are one of the largest political action committee in terms of contributions to federal candidates.

In 1985, over 175,000 Realtors® voluntarily contributed an average of $32.04 to RPAC. That translates to an annual contribution of $3.28 for our entire 700,000 membership. All RPAC fundraising is done at the local boards of Relators® level; no RPAC fundraising mechanisms, such as direct mail, are utilized at the national level. RPAC has cooperative agreements with each state association of Realtors® that are on file with the Federal Election Commission. These agreements spell out the relationship between national RPAC and each state PAC. Specifically, national RPAC receives 40 percent of all personal contributions received at the local level. Sixty percent remains with the state association and local boards who raised the money, and is used to support candidates in local, legislative and state-wide non-federal campaigns.

National RPAC is governed by a 21 member Board of Trustees who are appointed for three year staggered terms by the President of the National Association of Realtors®. These 21 Trustees are volunteers and are members of the National Association of Realtors®.

The primary responsibility of these Trustees is to make the final decision as to whom RPAC contributions are given. These decisions are based upon a specific set of criteria and recommendations which include:

1. Formal, written requests for contributions to specific candidates from local boards of Realtors® within each Congressional district and from the state associations.

2. A review of past voting records on legislation affecting the national interest and the total need for housing, commercial and agricultural real estate.

3. An analysis of the viability of the campaign as determined by such elements as polling data, local media response, campaign plan, etc.

By far, the most important of these criteria is the recommendation from lcoal Realtors®. In more than 87 percent of the time in the 1984 federal election cycle the RPAC Trustees supported the request from local Realtors®.

In the 1983-1984 federal election cycle, RPAC collected $3,568,145 from its 40 percent share of personal contributions. During this same time frame, a total of $3,112,754 were made in campaign contributions to federal candidates. In almost all cases these contributions were presented to candidates by our volunteer leadership at the local level—not by staff in Washington, D.C., because it is at the local level that RPAC contributions are made.

Realtors® all across this country are proud or our political action committee.

We take great pride in the fact that Realtors®, not professional fundraisers, raise our money from voluntary contributions at the local level.

We take great pride in knowing that all contribution decisions are made by Realtors® serving as volunteer trustees of RPAC.

We take great pride in knowledge that RPAC represents not only the interests of Realtors®, but to a large extent, the interests of the consumers they serve: home buyers and sellers.

We have heard a considerable amount of criticism about the supposed "evils" of PACs. The criticism that PACs are attempting to "buy" legislation with contributions rather than supporting principles is a very harsh indictment of the integrity of incumbent Members of Congress as well as of RPAC contributors.

From our point of view, the contributions we make to incumbents and challengers are made to support candidates whose basic philosophy of government, of economic policy and of housing policy is in concert with that of real estate professionals. We feel that contributors can best be heard as small businesspeople through their support of candidates who represent their philosophy. It makes little sense to support candidates who do not represent your philosophy.

Secondly, critics have focused on the allegation that PACs are drowning out the "voice" of the public interest. RPAC directly represents the interests of over 700,000 Realtors® from every part of this country. It is in our best interests to see that an economicl climate conducive to the buying or selling of home sites exists. Our action directly benefit the 84 million American families of 160 million people who own homes and the 29 million families who rent, some of who may desire home ownership, but who at least require decent housing. We resent the implication that we have no concern about the "public interest." If people, because of economic conditions, cannot buy or sell their home, Realtors® are out of business because when they hurt, we hurt.

The criticism that PACs are not accountable to anyone points out two major misconceptions on the part of PAC critics.

First, "all this money" to RPAC in fact comes from individual voluntary contributions, not from firms or corporations, but from thousands of citizens who comprise our membership. They are exercising their right to participate in our political system to, in fact, make democracy work better than otherwise. To many Realtors® who cannot walk precincts or who are unable to man phone banks because of their job or physical condition, making a $32.04 contribution, which is the RPAC average, is their way of participating. And this leads to the point on accountability.

If PAC contribution decisions do not represent the interests of those who contribute to the PAC, then these contributors very simply will not contribute in the future. This is the best form of accountability.

Finally, the criticism that PACs, such as RPAC, are responsible for the increasing costs of campaigns is ludicrous: RPAC does not establish postal rates; RPAC does not fix the rates for radio and television time or for advertising spade in newspapers; RPAC does not set the fees for consultants and pollsters. RPAC does, however, support candidates who represent the philosophical outlook of its contributors. When two candidates of different philosophical beliefs come together in that form of competition known as a political campaign, the decisions as to "how much to spend" and "on what" are dictated by the desire on the part of the politicians to get elected, not by RPAC.

Realtors® have operated under the Constitution and the statutes regulating contributions to candidates and we feel that this system has many strengths.

RPAC encourages greater grassroot participation by providing its voting membership with an additional opportunity to have their views and concerns heard in an organized fashion in issue areas that are of fundamental concern to them.

RPAC develops greater accountability to the real estate industry on the actions of Members of Congress because attention is focused in the mind of our contributors not only on what the politicians says but what he or she does.

The current system of campaign financing provides for a system of reporting contributions and the disclosure of expenditures which is open to public scrutiny. And that is a far cry from what existed prior to 1974.

The debate over campaign financing has been joined, and the shape of the debate revolves around two issues: The cost of campaigns, and how to fund campaigns.

Regarding the ever-increasing costs of political campaigns, it is evident to real estate professionals that political campaigns will get more costly in the future—not less so.

In a free, pluralistic society, free elections are competitive by nature. It is a competition of ideas, communicated by several media, to voters. The voters on election day go to the polls and vote for the candidate whose ideas are the most acceptable to them.

It would be a great error to artificially interfere, by government action, with this competition. To place restrictions on access to media, on the ability to communicate with concerned voters such as the politically active voters who comprise our membership, is to stifle communications and further add to the sense of frustration the American voter currently feels. It would also run against the grain of the guarantees of the first amendment.

So if we are to have open, free and competitive elections, the cost of campaigns will indeed increase. If that is the case then the funds needed to finance political campaigns should expand, not contract. What's wrong with encouraging more grassroots participation?

This leads to the second issue at hand—how to fund campaigns.

The alternative most often mentioned for the current system is the public financing of Congressional campaigns. And this question goes to the heart of what RPAC is and what it does.

RPAC, as an aggregate voice for our membership's political, social and economic concerns, not only informs American policy makers of these concerns but RPAC also provides an avenue for solidified political action for the thousands of real estate professionals whom we represent. But what endangers our system is the sense of individual political frustration, not PACs. Why do we have trouble getting people to vote? Why do Americans sense that their individual voices are lost? Why don't PACs, accordingly, serve as a collective voice antidote for individual frustration? We believe that RPAC does serve as one antidote for this national frustration.

The public treasury has never been the answer to awakening people. Indeed, real estate professionals whom we represent believe that solutions dipped in the public trough contain the very "political narcotic" which lulls people to sleep. We oppose the public financing Congressional elections.

A would-be voter who believes that his or her political contributions and participation in the political process are at an end with the extraction of the tax dollar from his or her pocket may not vote after all. If you believe that RPAC is worthwhile because it represents another way to directly stimulate over 700,000 voters' participation in the political process, then you may agree with us that RPAC is more likely to assist in overcoming individual apathy than any campaign financed by the U.S. Treasury.

If the goal is to expand the amount of funds available for campaigns, then how do we accomplish that?

Clamping down on PACs—business, professional or labor—won't add to private sector financing. We believe the provision of S. 1806, authorized by Senators Boren and Goldwater, which would limit PAC participation in elections is the wrong approach to encourage public participation in elections. For the reasons stated elsewhere in this statement, we believe PAC growth has reflected the desire of people to participate in the election process, not the opposite.

We believe that increasing individual gifts from the current $1,000 to $5,000 is a constructive response to the need for greater giving, more solid than the specter of public financing. Here, we agree with the provision of the Boren-Goldwater bill to raise the individual limit to $5,000. It accurately reflects the need to encourage individual financing amid rising campaign costs.

In the meantime, we ask you in your deliberations to keep one thought in mind.

RPAC is not a monolith as some would have you believe. RPAC represents people who have voluntarily selected financial contributions because RPAC, in their view, best represents their concept of what good government should be.

# APPENDIX 6

## PREPARED STATEMENT OF MICHAEL STAUFFENBERG ON S. 1806 UNDER CONSIDERATION BY THE RULES COMMITTEE OF THE U.S. SENATE

Mr. Chairman and members of the Senate, it has been more than a decade since Congress has attempted to implement changes in the area of campaign finance.

The purpose of my statement is to give some comments on Senator Boren's proposal (S. 1806) to amend the Federal Election Campaign Act of 1971 and to offer some suggestions in areas of campaign finance that I think the panel should address as well.

Having studied Senator Boren's proposal as expressed in S. 1806, it is my opinion that the limits on multicandidate committees to congressional campaigns limit challenger opportunities in the following manner:

(1) Legislation such as S. 1806 which lowers the maximum contribution that a PAC could give to a candidate would only be counter-productive in the following manner. As Dr. Herbert Alexander has pointed out in his monograph "The Case for PACs" and as from my own personal experience as well, candidates need more funds than ever before to pay for such sophisticated campaign technology such as polling and computers and media (such as advertising and paying television time) that is needed to communicate to the electorate and to get them involved as well. Getting a pollster to conduct a random sample survey of 1,000 people to see if you have a chance at winning may run upwards to $30,000 or more, while paying a top media consultant like Robert Goodman or a David Garth to film your commercials and to get them on television in the proper time slots may run into the hundreds of thousands of dollars. Reducing contributions from the PACs would make it difficult for challengers to afford these technologies, which today in the area of political campaigns, is essential if the voters are to have a choice in November.

(2) Reductions as proposed in S. 1806 would tend to benefit incumbents.

Incumbent office holders begin their reelection campaigns with a number of advantages among which are the ability to get media attention as well as the allowances for salary, staff (especially constituent service), office and communications (notably franked mail privilege and the television studios) whose estimated worth has been placed at over $1 million dollars over a two year period. On top of all these advantages is the incumbent's ability to raise money, particularly those from PACs.

While it is true that when you group incumbents together that they raise more PAC money than challengers, in competitive races where the incumbent is targeted and stands a good chance to lose his seat, challengers either match or outspend the contributions given by PACs to the incumbent himself. This additional PAC money helps the challenger in that it enables him to afford the technology (as previously mentioned) to get this messeage to electorate. By placing limitations of PAC contributions, again, you are limiting qualified challengers to complete in the electoral process by deproving them of funding that is needed to ensure competition and to give voters a choice.

(3) Placing contribution limits such as those proposed in S. 1806 would only increase the disparity that exists between the various types of PACs. The proposal to reduce the amount (from $5,000 to $3,000) PACs may contribute to candidates would restrict union and membership/health PACs, who tend to give the maximum amount to a large amount of candidates, but would have the least effect on corporate PACs, since few of them reach the current $5,000 limit.

(4) The limitations that are imposed on the PACs may result in increased independent expenditures.

Under the *Buckley* v. *Valeo* decision, no limits may be placed on the amounts individuals or groups may spend independently on behalf of or against candidates. By encouraging such a method of campaign spending, it would only lead to a loss of control of spending by the candidates themselves and since most of it is rather negative in nature, would not serve the best interests of the electorate in the long run.

Another problem that independent expenditure may cause is that in the course of the PAC's strategy to undertake such an endeavor, money formerly contributed to other candidates or incumbents may disappear or decrease.

If these candidates are in close races, that loss of contributions could mean the difference between winning and losing in November.

(5) The use of the "bundling" method would certainly increase as a way of contributing money to campaigns. It is my belief that if the limitations are imposed, the use of "bundling" that is, the collection of individual gifts for PAC affiliated persons for delivery to each PAC endorsed candidate would increase. I am quite confident that not too many Congressmen would like to prospect of checks being delivered enmasse to their office or the prospect of the media finding out that such an action took place. Such an action is possible if current limitations are imposed.

(6) Limitations as stated in S. 1806 raised other constitutional questions than are addressed by contribution or expenditure limits. Since the limitations would have an effect on aggregate receipts, candidates would need to pick and choose among preferred contributors in order to stay under the limit imposed. Those who were not able to do so because of this limit could possibly argue that their constitutional right to give would be denied, that is, given the assumption that the candidate would have accepted the contribution in the first place.

Having given my reasons for why S. 1806 may raise questions in the area of campaign finance, I'd like to suggest to the Committee that the best way to limit PAC influence (which is what I believe they want to do) is to enchance the financial capabilities of the political parties. There are so many candidates, (many of whom are quite qualified to serve in public office) but need the advice and serves that are probably best exemplified by the services offered by the NRCC, NRSC, and RNC and the Democrats, though in a much limited form. The parties ability to help these candidates are stretched pretty thin at this point in time and if additional financial resources were given, would result in a more competitive and democratic electoral system than currently exist today.

It is my belief (none that is shared among other) that the following measures should be taken:

(A) Increase the current limits on contributions to party committees.

(B) Allow individuals as well as PACs to underwrite with no limits the administrative, legal and other costs the parties would incur.

(C) Congress should implement legislation allowing time blocks on major television stations to be turned over to the parties in the public interest to get the message and purpose of elections across so that more people can participate fully in the process.

In conclusion, while I respect the debate that is going on in the Rules Committee about the possible harm PACs have on the electoral process, I see the situation getting worse than it already is. By limiting such sources of funding you are only discouraging individuals to participate in the political process. By not expanding and addressing the role of political parties to participate, you are not providing additional incentives for participation as well. I hope that the committee will take my suggestion seriously and may the legislation reflect the concerns of myself as that of many others on this topic.

# APPENDIX 7

## MEMORANDUM

To: Harriet Robnett, counsel, Senate Committee on Rules and Administration.
Through: Mark J. Davis, director, congressional liaison and intergovernmental affairs.
From Robert W. Biersack, supervisory statistician.

The following tables contain information on non-party contributions to candidates which total at least $5,000 during the 1983-84 election cycle. The first table lists the number of contributions by committees in categories by contribution amount. A contribution is equal to the total amount given to one candidate by one committee during the two-year period. The second table lists the number of non-party committees who made contributions in those categories.

### TABLE 1—NUMBER OF NONPARTY CONTRIBUTIONS OF AT LEAST $5,000 DURING THE 1983–84 ELECTION CYCLE

| Committee type | $5,000 to $5,999 | $6,000 to $6,999 | $7,000 to $7,999 | $8,000 to $8,999 | $9,000 to $9,999 | $10,000 | More than $10,000 |
|---|---|---|---|---|---|---|---|
| Corporate | 478 | 81 | 58 | 28 | 14 | 53 | 7 |
| Labor | 885 | 162 | 142 | 94 | 82 | 334 | 67 |
| No connected | 676 | 58 | 48 | 30 | 49 | 191 | 70 |
| Trade/member/health | 642 | 132 | 137 | 66 | 68 | 193 | 28 |
| Cooperative | 55 | 26 | 26 | 14 | 9 | 22 | 4 |
| Corp. without stock | 23 | 2 | 5 | 0 | 3 | 2 | 0 |
| Total | 2,759 | 461 | 416 | 232 | 225 | 795 | 127 |

### NUMBER OF NONPARTY COMMITTEES MAKING CONTRIBUITONS OF AT LEAST $5,000 DURING 1983–84

| Committee type | $5,000 to $5,999 | $6,000 to $6,999 | $7,000 to $7,999 | $8,000 to $8,999 | $9,000 to $9,999 | $10,000 | More than $10,000 |
|---|---|---|---|---|---|---|---|
| Corporate | 219 | 59 | 47 | 25 | 10 | 30 | 7 |
| Labor | 72 | 40 | 36 | 31 | 26 | 37 | 22 |
| No connected | 120 | 36 | 27 | 16 | 18 | 42 | 26 |
| Trade/member/health | 84 | 38 | 24 | 15 | 16 | 25 | 7 |
| Cooperative | 10 | 6 | 4 | 3 | 4 | 4 | 2 |
| Corp. without stock | 8 | 2 | 5 | 0 | 2 | 1 | 0 |
| Total | 513 | 181 | 141 | 90 | 76 | 139 | 53 |

The number of committees making at least one contribution of $5,000 or more by category is: Corporate—257, Labor—81, No Connected Organization—199, Trade/Member/Health—93, Cooperative—13, Corporation Without Stock—11.

If you have any questions about this information, please give me a call.

FEDERAL ELECTION COMMISSION,
*Washington, DC, November 25, 1985.*

## MEMORANDUM

To: Harriet Robnett, Counsel, Senate Committee on Rules and Administration.
Through: Mark J. Davis, Director, congressional liaison and intergovernmental affairs.
From: Robert W. Biersack, supervisory statistician.
Subject: Non-party contributions of at least $5,000 to Senate candidates during 1983-84.

Enclosed are the tables you requested isolating contributions to Senate candidates made during 1983-84. The definitions and limitations are the same here as for the earlier tables displaying contributions to all candidates. If you have any questions, please give me a call.

### TABLE 1—NUMBER OF NONPARTY CONTRIBUTIONS OF AT LEAST $5,000 DURING THE 1983-84 ELECTION CYCLE

| Committee type | $5,000 to $5,999 | $6,000 to $6,999 | $7,000 to $7,999 | $8,000 to $8,999 | $9,000 to $9,999 | $10,000 | More than $10,000 |
|---|---|---|---|---|---|---|---|
| Corporate | 314 | 55 | 46 | 20 | 12 | 42 | 7 |
| Labor | 218 | 27 | 45 | 26 | 45 | 131 | 21 |
| No connected | 309 | 34 | 18 | 16 | 24 | 127 | 12 |
| Trade/member/health | 186 | 42 | 38 | 16 | 27 | 99 | 3 |
| Cooperative | 12 | 4 | 5 | 4 | 5 | 8 | 1 |
| Corp. without stock | 11 | 2 | 5 | 0 | 3 | 2 | 0 |

### NUMBER OF NONPARTY COMMITTEES MAKING CONTRIBUTIONS OF AT LEAST $5,000 DURING 1983-84

| Committee type | $5,000 to 5,999 | $6,000 to 6,999 | $7,000 to 7,999 | $8,000 to 8,999 | $9,000 to 9,999 | $10,000 | More than $10,000 |
|---|---|---|---|---|---|---|---|
| Corporate | 165 | 41 | 37 | 17 | 9 | 27 | 7 |
| Labor | 52 | 20 | 29 | 15 | 18 | 30 | 18 |
| No connected | 90 | 26 | 15 | 11 | 12 | 37 | 10 |
| Trade/member/health | 54 | 26 | 16 | 10 | 14 | 19 | 3 |
| Cooperative | 6 | 4 | 2 | 3 | 4 | 3 | 1 |
| Corp. without stock | 6 | 2 | 5 | 0 | 2 | 1 | 0 |

### TABLE 1.—NUMBER OF NONPARTY CONTRIBUTIONS TO HOUSE AND SENATE CANDIDATES IN AMOUNTS OF $5,000 AND OVER IN $1,000 INCREMENTS 1983-1984 ELECTION CYCLE

| Committee type | $5,000 to $5,999 | $6,000 to $6,999 | $7,000 to $7,999 | $8,000 to $8,999 | $9,000 to $9,999 | $10,000 |
|---|---|---|---|---|---|---|
| Corporate | 478 | 81 | 58 | 28 | 14 | 60 |
| | (S)314<br>(H)164 | (S)55<br>(H)26 | (S)46<br>(H)12 | (S)20<br>(H)8 | (S)12<br>(H)2 | (S)49<br>(H)11 |
| Labor | 885 | 162 | 142 | 94 | 82 | 401 |
| | (S)218<br>(H)667 | (S)27<br>(H)135 | (S)45<br>(H)97 | (S)26<br>(H)68 | (S)45<br>(H)37 | (S)152<br>(H)249 |
| No connected | 676 | 58 | 48 | 30 | 49 | 261 |
| | (S)309<br>(H)367 | (S)34<br>(H)24 | (S)18<br>(H)30 | (S)16<br>(H)14 | (S)24<br>(H)25 | (S)149<br>(H)112 |

## TABLE 1.—NUMBER OF NONPARTY CONTRIBUTIONS TO HOUSE AND SENATE CANDIDATES IN AMOUNTS OF $5,000 AND OVER IN $1,000 INCREMENTS 1983–1984 ELECTION CYCLE—Continued

| Committee type | $5,000 to $5,999 | $6,000 to $6,999 | $7,000 to $7,999 | $8,000 to $8,999 | $9,000 to $9,999 | $10,000 |
|---|---|---|---|---|---|---|
| Trade/member/health | 642 | 132 | 137 | 66 | 68 | 221 |
|  | (S)186<br>(H)456 | (S)42<br>(H)90 | (S)38<br>(H)99 | (S)16<br>(H)50 | (S)27<br>(H)41 | (S)102<br>(H)119 |
| Cooperative | 55 | 26 | 26 | 14 | 9 | 26 |
|  | (S)12<br>(H)43 | (S)4<br>(H)22 | (S)5<br>(H)21 | (S)4<br>(H)10 | (S)5<br>(H)4 | (S)9<br>(H)17 |
| Corporation w/o stock | 23 | 2 | 5 | 0 | 3 | 2 |
|  | (S)12<br>(H)11 | (S)2<br>(H)0 | (S)5<br>(H)0 | (S)0<br>(H)0 | (S)3<br>(H)0 | (S)2<br>(H)0 |
| Total | 2,759 | 461 | 416 | 232 | 225 | 971 |

## TABLE 2.—NUMBER OF NONPARTY COMMITTEES [1] MAKING CONTRIBUTIONS OF AT LEAST $5,000 1983–1984 ELECTION CYCLE

| Committee type (total [1]) | $5,000 to $5,999 | $6,000 to $6,999 | $7,000 to $7,999 | $8,000 to $8,999 | $9,000 to $9,999 | $10,000 |
|---|---|---|---|---|---|---|
| Corporate (257) | 219 | 59 | 47 | 25 | 10 | 30 |
|  | (S)165<br>(H)54 | (S)41<br>(H)18 | (S)37<br>(H)10 | (S)17<br>(H)8 | (S)9<br>(H)1 | (S)27<br>(H)3 |
| Labor (81) | 72 | 40 | 36 | 31 | 26 | 37 |
|  | (S)52<br>(H)20 | (S)20<br>(H)20 | (S)29<br>(H)7 | (S)15<br>(H)16 | (S)18<br>(H)8 | (S)30<br>(H)7 |
| No connected (199) | 120 | 36 | 27 | 16 | 18 | 42 |
|  | (S)90<br>(H)30 | (S)26<br>(H)10 | (S)15<br>(H)12 | (S)11<br>(H)5 | (S)12<br>(H)6 | (S)37<br>(H)5 |
| Trade/member/health (93) | 84 | 38 | 24 | 15 | 16 | 25 |
|  | (S)54<br>(H)30 | (S)26<br>(H)12 | (S)16<br>(H)8 | (S)10<br>(H)5 | (S)14<br>(H)2 | (S)19<br>(H)6 |
| Cooperative (13) | 10 | 6 | 4 | 3 | 4 | 4 |
|  | (S)6<br>(H)4 | (S)4<br>(H)2 | (S)2<br>(H)2 | (S)3<br>(H)0 | (S)4<br>(H)0 | (S)3<br>(H)1 |
| Corporation w/o stock (11) | 8 | 2 | 5 | 0 | 2 | 1 |
|  | (S)6<br>(H)2 | (S)2<br>(H)0 | (S)5<br>(H)0 | (S)0<br>(H)0 | (S)2<br>(H)0 | (S)1<br>(H)0 |
| Total (654) | 513 | 181 | 141 | 90 | 76 | 139 |
|  | (S)369<br>(H)154 | (S)129<br>(H)62 | (S)109<br>(H)32 | (S)56<br>(H)34 | (S)69<br>(H)17 | (S)117<br>(H)22 |

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[1] This table shows the number of Nonparty Committees making contributions in various dollar categories with a breakdown between Senate (S) and House (H). If PAC A makes 1 or more contributions in each category it is a single count in each category. Each total at the bottom shows the number of Committees making contribution at each dollar level. The total figure on the left shows the number of Nonparty Committees making contributions in all categories $5,000 and up. PAC A would be counted only once in the column on the left although it made 10 contributions in each dollar category.

# APPENDIX 8

## Financing Congressional Campaigns: Contributors, PACs and Parties

### FINANCING CONGRESSIONAL CAMPAIGNS

### *An analysis of congressional campaign financing trends*

The growth in congressional campaign expenditures in the last decade has captured widespread attention. For some observers the almost 500 percent increase in spending from 1972 through 1984 (see Table 1) has caused great concern. Those disturbed by this trend often describe campaign spending as out of control and fear that many talented individuals are being priced out of running for office. They maintain that the ever larger sums of money required to mount credible campaigns, coupled with the system of strict contribution limits enacted in the Federal Election Campaign Act Amendments of 1974, favor wealthy candidates willing to help fund their own efforts or force candidates to turn to political action committees (PACs) whose contributions may be used to advance the PAC sponsors' specific legislative interests.

TABLE 1.—CONGRESSIONAL CAMPAIGN EXPENDITURES, 1972–84

[Dollar amount in millions]

| Election cycle | Total | Senate | House |
|---|---|---|---|
| 1971–72 | $66.4 | $26.4 | $40.0 |
| 1973–74 | 73.9 | 28.9 | 45.0 |
| 1975–76 | 125.5 | 46.3 | 79.2 |
| 1977–78 | 197.3 | 86.7 | 110.6 |
| 1979–80 | 238.9 | 102.9 | 136.0 |
| 1981–82 | 342.4 | 138.4 | 204.0 |
| 1983–84 | 374.1 | 170.5 | 204.6 |

Source: Citizens' Research Foundation compilation based on FEC and other data.

Other observers are less concerned by the increase in congressional campaign expenditures. Some argue that no objective standard is available by which to determine when expenditures have become too great. Others point out that when spending figures from 1972 through 1984 are adjusted to account for inflation, spending has increased by 125 percent rather than 500 hundred percent (see Figure 1).

Changes in the sources of campaign funds also have aroused controversy. Some critics find the growing importance of PACs in congressional campaign financing a cause for alarm, claiming it represents a trend toward special interest domination of Congress. Supporters of PACs, however, interpret the same growth as evidence of greater citizen participation in electoral politics. As PAC contributions to congressional candidates have increased, the proportion of campaign funds supplied directly to candidates by individual donors has declined. In particular, donors of modest amounts appear to play a role of diminishing importance in congressional campaign funding.

### *Open seats, challengers and incumbents*

Since 1972 growth in congressional campaign spending has far outstripped the rate of inflation as measured by the Consumer Price Index (CPI). In fact, as Table 2 indicates, spending by all congressional candidates in both primary and general election campaigns has risen three times the rate of inflation during that period.

As Figure 2 reveals, among major-party general election candidates, campaigns for open seats on average are the most expensive, having quadrupled in cost since 1972. Campaigns by challengers contesting seats held by incumbents are the least expensive; significantly, most challengers lose, often by large margins. Despite the comparatively low level of spending by challengers, the cost of challenger campaigns has tripled since 1972. Although incumbents do not mount the most expensive campaigns, incumbent campaign costs have risen more than any others: In 1984 incumbents spent five times what their counterparts spent in 1972.

**Figure 1**

**Congressional Campaign Expenditures, 1972-1974**

(in actual and 1972 dollars)

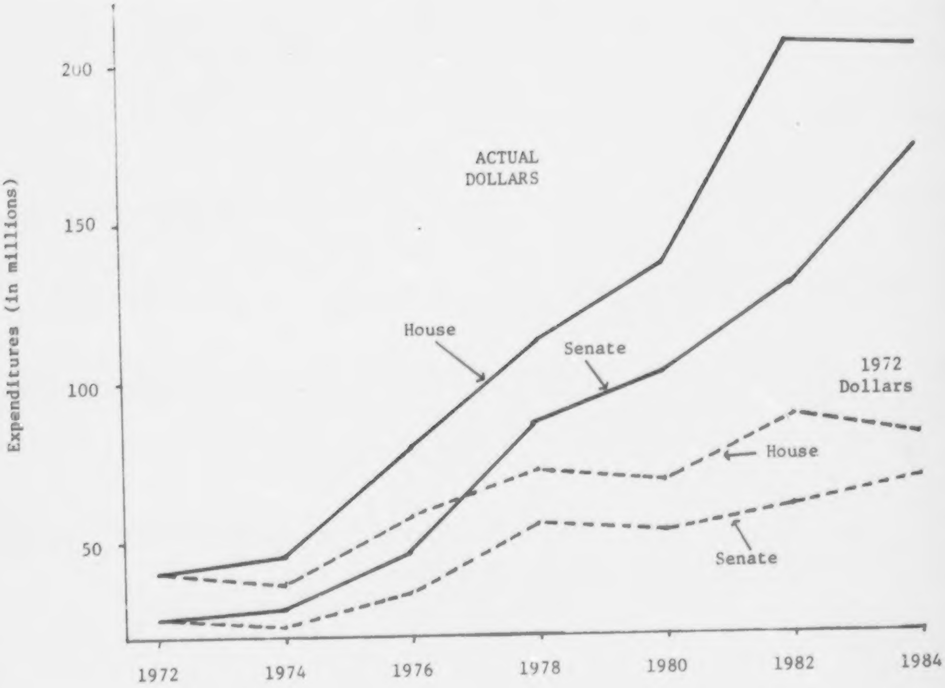
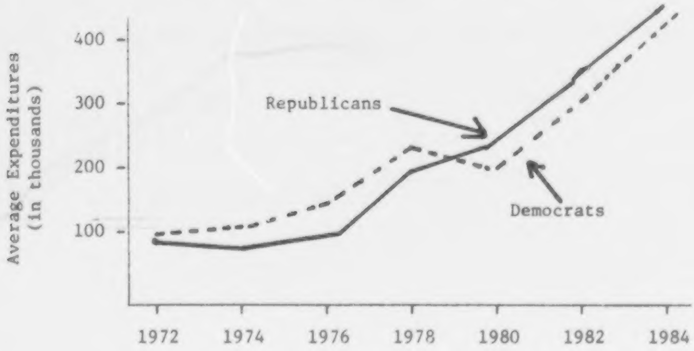
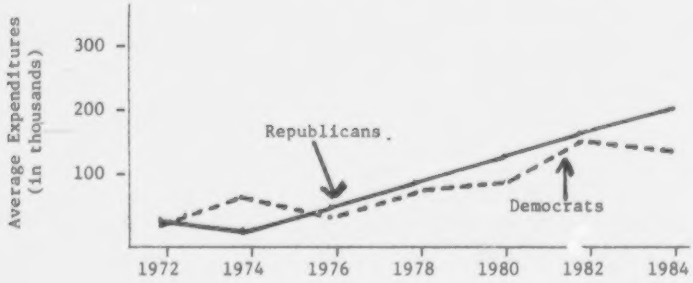


**Figure 2**

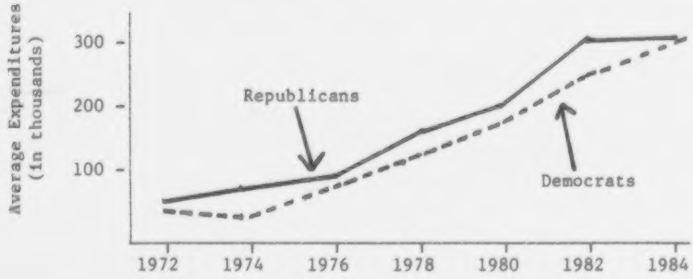
**Average Campaign Expenditures by House Candidates**



**a. Open Seats**



**b. Challengers**



**c. Incumbents**

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Source: 1972-1978 data from Gary C. Jacobson, "Money in the 1980 and 1982 Congressional Elections," in Michael J. Malbin, ed., Money and Politics in the United States (American Enterprise Institute, 1984), pp. 55-56; 1980-1984 from the FEC.

TABLE 2.—RATE OF INCREASE IN CONGRESSIONAL CAMPAIGN EXPENDITURES, 1972–84

| Election years | CPI | Percent increase | | Campaign expenditures [in millions] |
|---|---|---|---|---|
| 1972 | 125.3 | | | $66.4 |
| 1974 | 147.7 | 18 | 11 | 73.9 |
| 1976 | 170.5 | 15 | 70 | 125.5 |
| 1978 | 195.4 | 15 | 57 | 197.3 |
| 1980 | 246.8 | 26 | 42 | 238.9 |
| 1982 | 289.1 | 17 | 43 | 342.4 |
| 1984 | 311.1 | 8 | 9 | 374.1 |
| 1972–84 | | 148 | 463 | |

Source: Citizens' Research Foundation compilation from FEC and other data.

*Incumbents versus challengers*

The spending gap between incumbents and challengers remains substantial, although it varies by party affiliation. In 1974 Democratic incumbents who won reelection with 60 percent or more of the vote spent an average of three times as much as their Republican challengers ($35,000 versus $12,000); in 1982 they spent only twice as much ($207,000 versus $110,000). In 1974 Republican incumbents who won their races with at least 60 percent of the vote spent on average more than twice as much as their Democratic challengers ($61,000 versus $26,000); in 1982 they spent almost five times as much ($187,000 versus $37,000).

*PAC contributions*

Of the three sources of congressional campaign funds—individuals, parties and PACs—PACs have generated the most publicity. The number of PACs active in federal election campaigns has grown substantially, but the amounts PACs contribute to congressional candidates have increased at an even greater rate (see Table 3). From 1974 through 1984, the number of PACs grew by 579 percent; during the same period PAC contributions to congressional candidates increased by 742 percent. The total amount spent by congressional candidates during the period increased by 406 percent, from $73.9 million to $374.1 million.

TABLE 3.—INCREASE IN THE NUMBER OF PACS AND IN PAC CONTRIBUTIONS TO CONGRESSIONAL CANDIDATES

[Dollar figures in millions]

| | 1974 | 1976 | 1978 | 1980 | 1982 | 1984 | 1974–84 |
|---|---|---|---|---|---|---|---|
| Number | 608 | 1,146 | 1,653 | 2,551 | 3,371 | 4,009 | |
| Percent increase | | 88 | 44 | 54 | 32 | 19 | 559 |
| PAC contributions | $12.5 | $22.6 | $35.2 | $55.2 | $83.6 | $105.3 | |
| Percent increase | | 81 | 56 | 57 | 51 | 26 | 742 |

Source: Federal Election Commission.

Accordingly, since 1974 PACs have accounted for an increasing share of congressional campaign receipts (see Table 4). PAC contributions to Senate general election candidates as a percentage of their total receipts, that is, receipts in their primary and general election campaigns combined, have fluctuated during the period; in 1984 they represented 18 percent of those receipts, 1 percent less than the 1980 high-water mark. In contrast, PACs have contributed a steadily increasing percentage of House general election candidate receipts, reaching 36 percent in 1984. Senate candidates may rely less on PAC contributions because their longer term in office and their greater visibility permit them to attract campaign funds from a greater diversity of sources, including individual donors. The percentage of congressional campaign receipts represented by PAC contributions, of course, varies with the category of congressional candidates examined. It is much greater for incumbents than for challengers. It also is greater for general election candidates than for candidates who failed to win their primary elections. When PAC contributions are measures as a percentage of receipts of all congressional candidates, including primary losers, the percentage is far smaller than when only general election candidates or incumbents are examined.

### TABLE 4.—PAC CONTRIBUTIONS AS A PERCENTAGE OF CONGRESSIONAL CAMPAIGN RECEIPTS: (GENERAL ELECTION CANDIDATES)

[In percent]

| | 1974 | 1976 | 1978 | 1980 | 1982 | 1984 |
|---|---|---|---|---|---|---|
| House | 17 | 22 | 24 | 28 | 30 | 36 |
| Democrats | 22 | 30 | 27 | 32 | 34 | 45 |
| Republicans | 12 | 19 | 23 | 26 | 28 | 33 |
| Senate | 11 | 15 | 13 | 19 | 17 | 18 |
| Democrats | 15 | 20 | 14 | 18 | 18 | 20 |
| Republicans | 8 | 13 | 13 | 24 | 20 | 20 |

Source: 1974 and 1976 figures calculated from Gary Jacobson, "Money in Congressional Elections" (Yale, 1980) pp. 58–61, 78–81; 1978–84 figures calculated from FEC and Democratic Study Group data.

*Contributions from individuals*

Although money contributed to candidates directly by individuals remains the principal source of campaign funds for congressional general election candidates of both major parties, as Table 5 indicates, individual contributions to House general election candidates of both parties have diminished in relative importance, particularly for Democratic candidates. In 1984 Democratic House general election candidates as a group received only a bare majority of their campaign funds from individuals. Moreover, Democratic House incumbents seeking reelection received only 45 percent of their campaign funds in direct individual contributions while relying on PACs to provide 47 percent of their funds. According to a Democratic Study Group (DSG) report, 1984 marked the first time that any substantial category of candidates received a majority of its campaign funds from a source other than individual donors.

### TABLE 5.—INDIVIDUAL CONTRIBUTIONS AS A PERCENTAGE OF CONGRESSIONAL CAMPAIGN RECEIPTS

[In percent]

| | 1974 | 1976 | 1978 | 1980 | 1982 | 1984 |
|---|---|---|---|---|---|---|
| House: | | | | | | |
| Democrats | 76 | 65 | 70 | 66 | 64 | 54 |
| Republicans | 78 | 68 | 69 | 68 | 66 | 62 |
| Senate: | | | | | | |
| Democrats | 84 | 77 | 84 | 81 | 81 | 80 |
| Republicans | 79 | 82 | 85 | 74 | 79 | 79 |

Source: 1974 and 1976 figures calculated from Gary Jacobson, "Money in Congressional Elections" (Yale, 1980) pp. 58–61, 78–81; 1978–84 figures calculated from FEC and Democratic Study Group data.

The decline in the importance of individual donors as a source of campaign money is especially notable among donors of modest amounts, that is, less than $100 (see Table 6). Until 1982 small donors supplied a greater percentage of House general election candidate campaign funds than donors of $100 or more; in the last two election cycles donors of large amounts have assumed a role of greater importance. Since 1974 donors of $100 or more have played a more important role in Senate general election candidate funding; only in 1978 did donors of small amounts supply a greater percentage of Senate general election campaign receipts.

### TABLE 6.—TRENDS IN INDIVIDUAL CONTRIBUTIONS TO CONGRESSIONAL GENERAL ELECTION CANDIDATES, 1974–84 [1]

[Dollar figures in millions]

| | 1974 | 1976 | 1978 | 1980 | 1982 | 1984 |
|---|---|---|---|---|---|---|
| House: | | | | | | |
| Under $100 | $20.8 | $23.7 | $35.4 | $37.8 | $41.2 | $39.8 |
| Percent of total | 46 | 36 | 38 | 30 | 22 | 19 |
| Over $100 | 12.6 | 14.8 | 20.8 | 33.8 | 56.5 | 56.3 |
| Percent of total | 27 | 22 | 22 | 26 | 29 | 27 |
| Senate: | | | | | | |
| Under $100 | 10.6 | 11.1 | 29.2 | 20.7 | 22.9 | 36.0 |
| Percent of total | 38 | 28 | 42 | 25 | 18 | 23 |
| Over $100 | 10.8 | 15.8 | 21.4 | 31.7 | 45.6 | 59.7 |
| Percent of total | 38 | 41 | 31 | 38 | 37 | 38 |

[1] Percentages are based on total receipts from all sources.

Source: Democratic Study Group Report No. 99–22, "Troubling Trends in Election Financing" (Oct. 22, 1985), pp. 31, 35.

*Self-contributions and loans*

Counted among contributions from individuals are those contributions and unrepaid loans that some congressional candidates make to their own campaigns. Table 7 indicates the relative importance of such self-contributions since 1974. The incidence of substantial self-contributions is greater among non-incumbents, both among challengers and among candidates for open seats. Incumbents, even those who are wealthy and who may have spent substantial personal funds to win their first elections, are generally able, once in office, to use their greater visibility and prestige to attract contributions from other individuals and from PACs. In the 1983–84 election cycle, self-contributions accounted for 18 percent of all Democratic Senate candidate receipts and 6 percent of all Republican Senate candidate receipts. Such contributions accounted for 26 percent of the receipts of Democratic non-incumbents (due in good measure to Democrat John D. Rockefeller IV's $10 million loans to his own successful open-seat race in West Virginia) and 18 percent of the receipts of Republican non-incumbents.

### TABLE 7.—CONGRESSIONAL CANDIDATES' OWN CONTRIBUTIONS AS A PERCENTAGE OF TOTAL CAMPAIGN RECEIPTS, 1974–84: (GENERAL ELECTION CANDIDATES)

[In percent]

| | 1974 | 1976 | 1978 | 1980 | 1982 | 1984 |
|---|---|---|---|---|---|---|
| House | 6 | 11 | 9 | 10 | 12 | 6 |
| Senate | 1 | 12 | 8 | 10 | 20 | 11 |

Sources: For 1974–82, Richard P. Conlon, "A New Problem in Campaign Financing," (paper presented at the 1984 American Political Science Association annual meeting), p. 13; for 1984, FEC final report for 1983–84 election cycle.

*Party contributions and coordinated expenditures*

The Republican party has consistently provided greater financial assistance to its congressional candidates than the Democratic party. As Table 8 indicates, since 1974 Republican party committees have contributed to or spent on behalf of their House general election candidates an average of four times as much as Democratic party committees have contributed to or spend on behalf of their House general election candidates. The corresponding figure for Republican party contributions to and expenditures on behalf of their Senate general election candidates is three times greater than similar Democratic party contributions and expenditures.

### TABLE 8.—PARTY CONTRIBUTIONS AS A PERCENTAGE OF CONGRESSIONAL CAMPAIGN RECEIPTS: (GENERAL ELECTION CANDIDATES)

| | 1974 | 1976 | 1978 | 1980 | 1982 | 1984 |
|---|---|---|---|---|---|---|
| House: | | | | | | |
| Democrats | 2 | 5 | 3 [1](3) | 2 (2) | 1 (2) | 1 (3) |
| Republicans | 9 | 13 | 8 (11) | 6 (9) | 5 (10) | 5 (13) |
| Senate: | | | | | | |
| Democrats | 2 | 3 | 2 (2) | 1 (4) | 1 (4) | 1 (6) |
| Republicans | 12 | 5 | 2 (8) | 2 (15) | 1 (15) | 1 (9) |

[1] Figures in parentheses include both party committee contributions to congressional candidates and coordinated party committee expenditures on their behalf.

Source: 1974-1976 figures calculated from Gary Jacobson, "Money in Congressional Elections" (Yale, 1980), pp. 58-61; 1978-1981, 1978-1984 figures calculated from FEC data.

The greater ability of the Republican party to support its candidates financially flows from its far more successful fund-raising results (see Table 9). Although Democratic party committees managed to close the fundraising gap somewhat in the 1983-1984 election cycle, reports of party fund-raising results in 1985 indicate that the gap may be widening once again. According to figures supplied by the National Republican Senatorial Committee (NRSC), although Republican party committees collected only about two-thirds of the amount they had received in 1984, Democratic party committees raised only about one-half their 1984 amount (see Table 10).

### TABLE 9.—MAJOR-PARTY FEDERAL ELECTION CAMPAIGN FUND RAISING

[Dollar amounts in millions]

| | 1977-78 | 1979-80 | 1981-82 | 1983-84 |
|---|---|---|---|---|
| Democrats | $26.4 | $37.2 | $39.3 | $98.5 |
| Republicans | 84.5 | 169.5 | 215.0 | 297.9 |

Source: Federal Election Commission.

### TABLE 10.—MAJOR PARTY NATIONAL COMMITTEE RECEIPTS, 1984 AND 1985

| | 1984 | 1985 | Percent change |
|---|---|---|---|
| Democrats: | | | |
| DNC | $24,321,000 | $8,459,000 | −65 |
| DSCC | 5,746,000 | 4,410,000 | −23 |
| DCCC | 6,425,000 | 5,180,000 | −19 |
| Total | 36,492,000 | 18,049,000 | −51 |
| Republicans: | | | |
| RNC | 61,632,000 | 39,175,000 | −36 |
| NRSC | 51,774,000 | 41,552,000 | −20 |
| NRCC | 31,917,000 | 19,208,000 | −40 |
| Total | 145,323,000 | 99,935,000 | −31 |

Source: National Republican Senatorial Committee.

Figures for party committee receipts and expenditures supplied by the Federal Election Commission and the NRSC represent only "hard money" raised and spent under FECA restrictions. They do not account for "soft money" raised outside FECA restraints but spent in ways intended to influence federal election results. These funds are raised from corporations and labor unions, which are not permitted to spend their treasury funds in connection with federal elections, and from individuals willing to give more than the federal law permits. They are spent to finance voter registration and turnout drives and to pay the costs of "generic" party advertising in which candidates are not mentioned by name. Although most of the attention given to soft money has focused on presidential campaigns, the activities paid for with soft money clearly benefit congressional candidates as well.

*Independent expenditures*

The impact of independent spending is difficult to measure. Such spending in congressional campaigns generated considerable publicity, in 1980, when four well-known liberal senators targeted by independent spending groups suffered defeat. In 1982 congressional independent expenditures more than doubled compared with the previous election cycle; 80 percent of the expenditures were made in negative campaigns, that is, campaigns to defeat specific candidates. Only one of the 17 targeted candidates was defeated, however, and factors other than negative independent expenditures probably account for that result. By 1984 enthusiasm for independent congressional campaign expenditures had waned (see Table 11). Moreover, recent reports have cast doubt on the efficacy of independent spending. They reveal that most of the expenditures reported by the largest independent spending committees in 1982 and 1984 actually were used to finance direct mail fund-raising appeals and committee administration costs and not political advertising and other direct campaign activities.

TABLE 11.—CONGRESSIONAL INDEPENDENT EXPENDITURES

| | 1976 | 1978 | 1980 | 1982 | 1984 |
|---|---|---|---|---|---|
| Actual amount | $387,000 | $303,000 | $2,338,000 | $5,775,000 | $5,996,000 |
| 1976 dollars | 387,000 | 264,000 | 1,615,000 | 3,394,000 | 3,270,000 |
| Percent negative | ([1]) | 25 | 61 | 80 | 44 |

[1] Not available.

Source: Federal Election Commission.

# APPENDIX 9

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
*Washington, DC.*

## CAMPAIGN FINANCE PROPOSALS TO LIMIT PACS AND TO GRANT FREE BROADCAST TIME: A LEGAL ANALYSIS OF S. 1806 (SENATOR BOREN, 99TH CONGRESS)

### EXECUTIVE SUMMARY

This report discusses the major campaign finance proposals to limit political action committees (PACs) and to grant free broadcast time to candidates which were part of S. 1806 introduced by Senator David L. Boren, in the 99th Congress. An introduction in part I of this report provides a brief background and history of that bill and discusses the major provisions of that bill.

Part II of this report discusses the constitutionality of the aggregate contribution limitation provisions from PACs to congressional candidates. This part concludes that legislative proposals, such as S. 1806 to expand the contribution limitation provisions of the Federal Election Campaign Act of 1971, as amended (FECA) by setting aggregate limitations on the amount of PAC contributions receivable by congressional candidates are arguably constitutional under the rationale of the *Buckley* v. *Valeo*, 424 U.S. 1, 24–28 (1976) Supreme Court decision upholding the constitutionality of the contribution limitation provisions because of actual corruption or the appearance of corruption.

Part III discusses the provisions of S. 1806 which would lower and raise certain contribution limitation provisions of the FECA. Generally, certain reasonable and justifiable increases in the contribution limitation provisions would be constitutionally acceptable under the *Buckley* decision's analysis and rationale. As long as the amendments to the contribution limitation provisions did not substantially impede First Amendment political dialogue and advocacy, then such amendments would seem to be constitutional in order to prevent corruption or the appearance of corruption in the political process.

Part IV discusses the prohibition of "bundling" by PACs as incorporated in S. 1806. "Bundling" is essentially the method of giving contributions to federal office candidates through PACs which request and deliver a number of checks in large bundles to candidates. The checks are written out in the name of the candidates and not in the name of the PACs; this process of delivering checks enables the PACs to circumvent the contribution limitation provisions of the FECA and still attain certain benefits of the contributions as if they were made by them since the PACs were the conduits of the contributions. This part examines some of the FEC advisory opinions regarding earmarked contributions through PACs. This part concludes that the prohibition of "bundling" by PACs would be constitutional since it could be justified against First Amendment challenges by the balancing arguments asserting that such prohibition is necessary to prevent actual corruption or the appearance of corruption in the electoral process.

Part V concerns the requirement of S. 1806 that a certain media attribution statement be used in print and electronic media political advertisements. The attribution statement identifying the sponsor and asserting that its cost of presentation is not subject to any campaign contribution limits would seem to be constitutional for the same reasons that the attribution statement under the FECA (2 U.S.C. §441d) has been found to be constitutional in *United States* v. *Insco*, 365 F. Supp. 1308 (M.D. Fla. 1973) and in *United States* v. *Scott*, 195 F. Supp. 440 (D. N.D. 1961).

Part VI of this report examines the constitutionality of the equal opportunities requirement for federal office candidates subjected to negative advertisements paid for by independent expenditures. This report concludes that the amendments to section 315(a) of the Communications Act of 1934, granting equal opportunities to federal office candidates under certain circumstances when they are targeted by independent electronic media political advertisements are arguably constitutional for

the same reasons that the fairness and equal opportunities doctrines were found to be constitutional in the *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367 (1969). However, the free response time proposal would have to overcome the FCC holding in the case of In Re *Zapple*, 23 F.C.C. 2d 707 (1972) which found that it would be inappropriate to require broadcast licensees to provide free response time to candidates since it would have the effect of subsidizing their campaigns.

## I. INTRODUCTION

In the first session of the 99th Congress, Senator David L. Boren and several other Senators [1] proposed legislation that would amend the Federal Election Campaign Act of 1971 (FECA) concerning contribution limitations for congressional offices and that would amend the Communications Act of 1934 regarding the broadcasting of certain material relating to federal office candidates. Senator Boren announced in the latter part of the first session of the 99th Congress that he would request that the Senate vote on this legislation by offering it as an amendment to the unrelated "Compact of Free Association" legislation (Amendment No. 880 to S.J. Res. 77, 99th Cong., 1st Sess.).[2] However, by agreement the amendment was ordered to lie on the table with the understanding that the proposal would be debated on December 2, 1985 and a vote taken on December 3.

On December 2 and 3, 1985 that proposal by Senator Boren and others was debated as Amendment Number 1168 to an unrelated bill (S. 655) concerning low-level radioactive waste.[3] After approximately four hours of debate, the Senate avoided a vote on that proposal by agreeing to consider it in the second session, and there was a recorded vote of 7-84 against tabling the Amendment.[4]

On October 29, 1985, Senator Boren and several other Senators (Senator Goldwater, Senator Hart, Senator Levin, and Senator Kassebaum) introduced S. 1806 entitled "Campaign Finance Reform Act of 1985" which was the same as the above amendments.[5] The major provisions of the bill would do the following:

(1) limit to $100,000 the amount of contributions a House candidate can receive from all political action committees (PACs),[6] in each two-year election cycle;

(2) raise the PAC limitation amount by $25,000 if two or more House candidates in a district qualify for the ballot in the primary and general elections;

(3) limit the amount that Senate candidates can accept from all PACs in an election cycle, which would vary with the population of their state from the lowest amount of $175,000 ($200,000 if two or more candidates qualify for the ballot in the primary and general elections) to the maximum amount of $750,000; the formula that would be used would be based on $35,000 times the number of congressional districts in a state;

(4) provide for an additional $25,000 in the amount of contributions from PACs when a House candidate is in a runoff election;

(5) provide for an additional amount of contributions for Senate elections totalling $25,000 or $12,500 times a state's number of congressional districts, when there is a Senate runoff election;

(6) lower the contribution limitation amounts to federal office candidates for PACs from $5,000 to $3,000 with respect to any federal election;

(7) raise the contribution limitation for individuals to federal office candidates with respect to any election from $1,000 to $1,500;

(8) count bundled contributions [7] received by candidates through PACs against the overall PAC-limitation amounts;

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[1] Other Senators co-sponsoring this legislation included: Senator Barry Goldwater, Senator Gary Hart, Senator Carl Levin, and Senator Nancy Landon Kassebaum.

[2] 131 Cong. Rec. S14094 (daily ed. Oct. 24, 1985).

[3] See generally 131 Cong. Rec. S16678-S16697 (daily ed. Dec. 3, 1985).

[4] 131 Cong. Rec. S16697 (daily ed. Dec. 3, 1985).

[5] See generally S. 1806 (99th Cong. 1st Sess. (1985)) in the Appendix *infra*.

[6] These terms "political action committee" or "PAC" are not found in the Federal Election Campaign Act of 1971, as amended or in the FEC regulations; rather they are referred to in the FECA and FEC regulations as separate segregated funds and also nonparty multicandidate political committees. See generally 2 U.S.C. §§ 441a, 441b, and 11 C.F.R. §§ 100.5, 110.2, 114.5 (1985).

[7] "Bundling" is a contribution technique which has been allowed by the Federal Election Comission that permits PACs to solicit contributions in a way that suggests that donors make contributions directly to a candidate by writing checks to the candidates and not to the PAC; when the PAC receives the checks written out to the candidate, it then delivers them in large bundles to the candidate.

(9) require PACs when advertising in the print or electronic media to disclose that such advertisements are paid for by their PACs and that the costs of such advertisements are not subject to any campaign contribution limits;

(10) allow federal office candidates to be provided equal opportunities from broadcast station licensees when such candidates are subjects of negative advertisements by independent expenditures.

The major provisions of S. 1806 generally affect five areas of federal election laws and raise the following consitutional issues: (1) whether or not aggregate contribution limitations on the amount of contributions which House and Senate candidates can receive from PACs are constitutional; (2) whether or not amendments to the contribution limitations raise further constitutional questions which were not addressed in *Buckley* v. *Valeo*[8] in 1976; (3) whether or not the restrictions on bundling contributions through PACs pose possible First Amendment problems; (4) whether or not the attribution statement required of PACs when advertising in the print or elections media pose any constitutional problems; and (5) whether or not the requirement that broadcast station licensees grant equal opportunities to federal office candidates when they are subject to negative advertisements by independent expenditures is constitutional.

## II. CONSTITUTIONALITY OF AGGREGATE CONTRIBUTION LIMITATIONS FROM PACS TO HOUSE AND SENATE CANDIDATES

Political action committees (PACs) which are also generally nonparty multicandidate political committees are restricted by certain contribution limitations under the federal Election Campaign Act of 1971, as amended (FECA):

1. $5,000—to a federal office candidate separately for each nominating convention, primary election, runoff election, or general election;
2. $5,000—to any other political committee in any calendar year.
3. $15,000—to political committees established and maintained by a national political party, which are not authorized political committees of any candidate, in any calendar year.
4. Unlimited—total aggregate amount of contributions.[9]

The contribution limitation provisions under the FECA were found to be constitutional against a First Amendment challenge by the Supreme Court in *Buckley* v. *Valeo* since they are justified by the Federal Government's interest in the prevention of corruption or the appearance of corruption that may be caused by the coercive influence of large financial contributions on candidates' positions and their decisions after being elected to office.[10] However, the Court in *Buckley* held that expenditure limitations were unconstitutional because they imposed direct and substantial restraints on the quality of political speech.[11]

The federal campaign finance reform legislation in the 1970's, embodied in the Federal Election Campaign act of 1971 and the 1974, 1976, and 1979 Amendments to that Act, reduced the roles of large individual contributors and increased the roles of special interest groups and business organizations and labor unions by providing for the establishment of separate segregated funds or political action committees.[12] On December 31, 1974 there were 608 PACs, and by January 1, 1986 the number of PACs had grown to 3,992.[13] In the 1977–78 two-year election cycle, PACs contributed $34.1 million to Senate and House candidates; this aggregate amount increased to $105.3 million in the 1983–84 two-year election cycle.[14]

[Figuresd in millions of dollars]

| | 1983–84 | 1981–82 | 1979–80 | 1977–78 |
|---|---|---|---|---|
| PAC contributions to all Federal candidates | $113.0 | $87.6 | $60.2 | $35.2 |
| To Senate and House candidates seeking election this cycle (1985–86) | 105.3 | 83.6 | 55.2 | 34.1 |
| Receipts | 288.7 | 199.5 | 137.7 | 8.0 |

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[8] 424 U.S. 1, 23–38 (1976).

[9] 2 U.S.C. § 441a(a)(2).

[10] 424 U.S. at 25.

[11] *Id.*, 39.

[12] H. Alexander, *Financing Politics, Money, Elections Political Reform*, p. 81 (2d ed. CQ Press 1980).

[13] See FEC Press Release, "PAC Numbers Continue to Drop In 1985" Jan. 20, 1986.

[14] See FEC Press Release, Dec. 1, 1985, p. 1.

[Figuresd in millions of dollars]

| | 1983-84 | 1981-82 | 1979-80 | 1977-78 |
|---|---|---|---|---|
| Disbursements | 266.8 | 190.2 | 131.2 | 77.4 |

Because of the significant growth in the number of PACs and of the mushrooming of PAC contributions to Senate and House candidates, legislation such as S. 1806 (99th Cong.) has been introduced that would limit and reduce the influence of PACs. One of the major provisions of this limitation would impose an aggregate limit on the amount a federal office candidate could receive from all PACs in a two-year election cycle.

S. 1806 would set an aggregate limitation of $100,000 in PAC contributions which a House candidate could receive; an additional $25,000 in PAC contributions would be allowed for House candidates if there are two or more House candidates in a district who qualify for the ballot in the primary and general elections. Under S. 1806 U.S. senatorial candidates would be limited to aggregate amounts of contributions from PACs which would vary with the population of their state from the lowest amount of $175,000 ($200,000 if two or more candidates qualify for the ballot in the primary and general elections) to the maximum amount of $750,000 which would be based on a formula using $35,000 times the number of congressional districts in a state.[15]

One of the first legislative proposals advocating an aggregate PAC limitation on contributions received by House candidates was H.R. 4970 introduced by Representatives Obey and Railsback and co-sponsored by approximately 120 other Members in the 96th Congress, first session (1979). H.R. 4970 provided for an aggregate limitation of $50,000 on the amount that a House candidate could accept from all PACs in a two-year election cycle. A similar proposal was offered as an amendment to the FEC authorization raising the aggregate limitation amount to $70,000 and was passed by the House in 1979, but no further legislative action was taken by Congress in the 96th Congress.[16] Legislative proposals providing for aggregate limitations on the amount of PAC contributions which congressional candidates can accept in a two-year election cycle have been introduced many times since the Obey-Railsback proposal in the 96th Congress, and S. 1806 in the 99th Congress is one of the latest examples of this type of legislation[17]

In examing the constitutionality of the proposal of S. 1806 and other legislation to set aggregate limits on the amount of PAC contributions which congressional candidates can accept in a two-year election cycle, an examination of the 1976 Supreme Court decision in *Buckley* v. *Valeo* [18] is necessary especially in regard to the Court's analysis of the constitutionality of contribution limitations. In *Buckley,* the Court found that Congress had the power to provide for certain campaign finance reform legislation, and it more particularly held that contribution limitations, despite First Amendment issues, are constitutional since they are justified by the Federal Government's interest in the prevention of corruption as well as the appearance of corruption.[19] According to the *Buckley* decision, large campaign contributions to federal office candidates may have a coercive influence on candidates' positions and their decisions after being elected to office.[20] Even though limitations on contributions involve some impingement on such First Amendment rights as speech, expression and association, contribution limitations are nevertheless appropriate legislative weapons against the reality of or appearance of corruption due to the dependence of candidates on campaign contributions.[21] Contribution limitations serve the basic Federal Governmental interest of preserving the integrity of the electoral process without directly infringing upon the fundamental First Amendment rights of individuals and candidates who engage in political speech, debate, and discussion.[22] Thus, unlike expenditure limitations,[23] contribution limitations are constitutional in that they serve important governmental interests of preventing corruption or the appearance of corruption when they are balanced against the First Amendment rights of speech, expression, and association.[24]

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[15] See S. 1806 in Appendix infra at pp. 2-4.

[16] H.R. 4970 was offered as an amendment to S. 832 (relating to FEC's authorization), and the aggregate PAC contribution limitation was raised to $70,000 ($85,000 in case of any runoff election). The amended Obey-Railsback proposal was passed by the House in 1979 by a 217-198 vote, but the Senate failed to consider S. 832 as amended with that proposal due to a threatened filibuster. See generally C. Buchanan, "PAC limitations: Obey-Railsback Plan Stalled In the Senate By Threat of Filibuster," Congressional Quarterly, V. 38, No. 1, Jan. 5, 1980 at p. 33.

[17] For examples of similar legislation in the 96th through 98th Congress see, J. Cantor, "Political Action Committees: Their evolution, Growth And Implications For the Political System," Library of Congress, CRS Rept. No. 84-78 Gov., Nov. 6, 1981, updated Apr. 30, 1984 at pp. 202-219.

[18] 424 U.S. 1 (1976).

[19] Id., 25.

[20] Ibid.

Legislative proposals such as S. 1806 to expand the contribution limitation provisions of the FECA by setting aggregate limitations on the amount of PAC contributions received by congressional candidates are arguably constitutional under the rationale of the *Buckley* decision upholding the constitutionality of limitations on contributions. The issue is essentially a First Amendment one in which the interests of the Federal Government in preventing corruption or the appearance of corruption are balanced against the First Amendment freedoms of speech, expression, and association. The closer the relationship of such legislation is to pure political speech, the narrower is the scope of permissible First Amendment infringement [25] since the laws and regulations imposing restraints on pure speech are subject to strict constitutional scrutiny which can be sustained only because of compelling governmental interests.[26] And laws restricting forms of conduct that are speech-related would be subject to a less rigorous scrutiny than if they were pure speech.[27] At issue is whether or not such proposals are pure speech or speech-related conduct that would require First Amendment protection. The Supreme Court in *Buckley* v. *Valeo* addressed such an issue when it considered the constitutionality of limitations on federal campaign contributions.[28]

In *Buckley*, the Supreme Court upheld the campaign contributions simply could not be equated with such conduct as the destruction of a draft card.[29] Campaign contributions are neither simply speech-related conduct nor pure speech, but they are "symbolic speech" which is a form of expression between speech-related conduct and pure speech.[30] The contribution limitation provisions of the FECA were permissible marginal restrictions on speech. The two governmental interests in preventing actual corruption and the appearance of corruption would outweigh the speech element of contributions under a balancing test of such interests and any restrictive effects on political speech.[31]

However, the *Buckley* Court noted that contributions could have a severe impact on political dialogue if they prevented candidates from amassing funds and resources for an effective advocacy.[32] The contributions limitations of the FECA according to *Buckley* were drafted in such a way that they focused precisely on the problem of large campaign contributions while allowing for independent political expression and a limited but substantial financial assistance to candidates and political committees.[33]

Thus, the issue arises whether or not further amendments to the contribution limitation provisions of the FECA, such as the proposed aggregate limitations on the amount of contributions that congressional candidates can receive from PACs, are constitutional in light of the *Buckley* constitutional analysis of contribution limitations. Would these proposed amendments to the contribution limitation provisions of the FECA so limit the amount of contributions that congressional candidates could receive from PACs that they could not wage an effective campaign? Would these amendments impact on political dialogue in such a way that congressional candidates would be unable to afford the high cost of print and electronic media advertisements? If the aggregate PAC limitations so severely restrict the First Amendment speech, expression, and association rights of congressional candidates, then they may arguably be impermissible restrictions on such First Amendment rights. But, if they invoke only minimal direct restraint on the First Amendment speech, expression and association rights that can be justified by such governmental interests in preventing corruption and/or the appearance of corruption, then they would appear to be constitutional in the same manner that the contribution limitations of the FECA were upheld as constitutional in *Buckley*.

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[21] *Id.*, 28-29. And see, *California Medical Association* v. *Federal Election Commission*, 453 U.S. 182, 196 (1981).

[22] 424 U.S. at 24-28.

[23] According to the Supreme Court in *Buckley* v. *Valeo*, 424 U.S. at 15-23, 39-59 (1976), expenditure limitations were unconstitutional in violation of the First Amendment freedoms of speech and association; moreover, the governmental interests in supporting expenditure limitations involve suppressing communication and restricting the voices of people and groups who have money to spend. Id., 18.

[24] Id., 28-29.

[25] R. Birnbaum, "The Constitutionality of the Federal Corrupt Practices Act After *First National Bank of Boston* v. *Bellotti*, 28 American University Law Review 149, 153 (1979).

[26] See, *New York Times Co.* v. *United States*, 403 U.S. 713, 714 (1972) (injunction of a classified study); *Freedman* v. *Maryland*, 380 U.S. 51, 58 (1965) (film censorship); and *Near* v. *Minnesota*, 283 U.S. 697, 713 (1931) (prior restraint of publication).

[27] See R. Birnbaum, supra at p. 153. And see, *Grayned* v. *City of Rockford*, 408 U.S. 104, 117-119 (1972) (anti-noise statute upheld); *Cox* v. *Louisiana*, 379 U.S. 559, 560-564 (1965) (picketing statute upheld); *Talley* v. *California*, 362 U.S. 60, 64-65 (1960) (struck down a municipal ordinance banning handbills).

[28] 424 U.S. at 16.

[29] 424 U.S. at 16-17, 21.

[30] Ibid.

[31] Id., 22-38.

[32] Id., 24-29.

[33] Id., 28.

In summary, if the proposals to further restrict contribution limitations of PACs are reasonable and only marginally affect any First Amendment rights of speech, expression, and association, they would seem to be constitutional in light of the *Buckley* Supreme Court decision in order to protect the electoral process from actual corrupton and/or the appearance of corruption.[34] However, if such limitations severely impede PACs so that they are ineffective, and, if such limitations prevent candidates from being able to amass the necessary funds and revenues for effective political advocacy, then there may be First Amendment problems with such limitations. Moreover, severe limitations on PAC contributions may pose a First Amendment freedom of association problem since such limitations may effectively eliminate a collective voice and a mechanism by which electors can express their goals and concerns.[35] But this does not appear to be the case in the aggregate contribution limitation proposal concerning PACs in S. 1806.

## III. LOWERING AND RAISING CERTAIN CONTRIBUTION LIMITATION AMOUNTS OF THE FECA

S. 1806 and other similar federal campaign finance legislation propose: (1) lowering the contribution limitation amounts that PACs may give to federal office candidates from $5,000 per election to $3,000 and (2) raising individual contribution limitations from $1,000 per election to $1,500.[36] Generally it would seem that reasonable and justifiable increases or decreases in the contribution limitation provisions of the FECA would be constitutionally acceptable under the analysis and rationale of the *Buckley* decision regarding the constitutionality of campaign contribution limitations. The obvious purpose of the proposal in S. 1806 to lower the contribution limitation amount for PACs to a federal office candidate from $5,000 per election to $3,000 per election is to reduce the influence of PACs in financing federal office campaigns. And the obvious purpose of increasing the amounts of the individual contribution limitation from $1,000 to $1,500 per election is to enhance the role of individual contributions in federal elections.

The new contribution limitation provisions of S. 1806 would seem to be constitutional as long as they accomplished the primary purpose of the contribution limitations as set forth in the *Buckley* decision—that is to limit actual corruption and/or the appearance of corruption.[37] The *Buckley* Court was concerned about the extent to which large contributions are given to secure political quid pro quos from current and potential federal office holders as well as the appearances of corruption which may come from a public awareness of the possibilities of abuse of the electoral system due to large campaign contributions.[38] In focusing on the individual $1,000 per election contribution of the FECA, the *Buckley* Court found that the $1,000 contribution limitation focuses:

"* * *precisely on the problem of large campaign contributions—the narrow aspect of political association where the actuality and potential for corruption have been identified—while leaving persons free to engage in independent political expression, to associate actively through volunteering their services, and to assist to a limited but nonetheless substantial extent in supporting candidates and committees with financial resources."[39]

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[34] Id., 25, 28-29.

[35] S. Rothenberg, "Campaign Regulation And Public Policy: PACs, Ideology, And The FEC," The Free Congress Research and Education Foundation, pp. 44-45, 1981.

[36] For the present contribution limitation provisions under the FECA, see 2 U.S.C. § 441a(a)(2)(B) (PACs) and 2 U.S.C. § 441a(a)(1)(A) (individuals). And see S. 1806 at pp. 1-2 in the Appendix infra for the proposed amendments to the contribution limitation provisions.

[37] 424 U.S. at 26. See generally, J. Cantor, "Political Action Committees . . ." supra at pp. 202-206.

[38] 424 U.S. at 27.

The governmental interests served by restricting the size of contribution limitations to federal office candidates were sufficient to justify the limited effect on First Amendment freedoms caused by contribution limitations.[40]

If further amendments to the contribution limitation provisions were proposed that would substantially reduce the contribution limitation provisions, such as those for PACs, so that they would impede effective political dialogue and advocacy, then there might be First Amendment problems with such amendments; but this does not appear to be the case with regard to the proposed amendments of S. 1806. While the proposed contribution limitation amendment of S. 1806 ($3,000 per election limit) as it relates to PACs is substantially more restrictive than the $5,000 limit of the 1974 FECA Amendments,[41] it may pass constitutional muster if it serves the governmental interests of preventing both actual and apparent corruption by offsetting any actual or apparent quid pro quo between the donors and recipients of such contributions. However, one negative aspect of further restrictions on PACs is that such new PAC restrictions might encourage PACs to engage more in and rely on independent expenditures in congressional campaigns.[42]

INDEPENDENT SPENDING IN CONGRESSIONAL RACES

[Figures in millions of dollars]

| | 1979–80 | 1981–82 | 1983–84 |
|---|---|---|---|
| Total spent independently congressional races only | $2.3 | $5.75 | $5.3 |
| Total spent against congressional candidates | $1.4 | $4.6 | $1.9 |
| (Percentage of total spent) | (61) | (80) | (36) |

The increase in the individual contribution limitation amount from $1,000 to $1,500 would not seem to pose any problems of corruption or the appearance of corruption by effecting any new substantial quid pro quo arrangements between the donors and recipients of campaign contributions. The $1,000 contribution limitation of the 1974 FECA Amendments has not been increased since 1974, and the inflationary factor, of $1,000 in 1974 has made a $1,000 contribution in 1986 less meaningful and less valuable than a $1,000 contribution was in 1974. Consequently, a modest increase in the contribution limitation provision for individuals, such as from $1,000 to $1,500, would not seem to pose any problems as to actual corruption or the appearance of corruption, and thus this amendment should not pose any First Amendment constitutional problems.

### IV. PROHIBITION OF "BUNDLING" OF CONTRIBUTIONS BY PACS

A provision in S. 1806 would effectively eliminate conduit contributions through PACs by requiring that such contributions be treated as coming from the PACs and counted against the PAC's contribution limitations applicable to federal office candidates.[43] "Bundling" is a method of giving contributions to federal office candidates: (1) whereby a PAC requests of its contributors that they make contributions to a particular candidate by drafting checks written out in the name of a candiate, but not to the PAC; (2) whereby the PAC then delivers the number of checks in large bundles to the federal office candidate; (3) whereby the PAC can circumvent the maximum $5,000 per election contribution limitation and yet attain similar benefits as if the PAC had given the contributions directly, such as the benefit of knowing that a certain recipient candidate understands that a particular PAC with certain special interests was the conduit for such bundled contributions.[44]

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[39] Id., 28.

[40] Id., 29.

[41] It should also be noted that the $5,000 per election contribution limitation for PACs that was enacted in 1974 (Pub. L. No. 93-443, tit. I, sec. 101, 88 stat. 1263 (1974)) has not been adjusted for inflation; consequently, the inflationary factor alone has made the 1974 $5,000 contribution limitation for PACs substantially less in 1986 dollars.

[42] According to the FEC Press Release of Sept. 9, 1985 at p. 1, the following figures reflect independent spending in congressional races.

[43] See S. 1806 infra in the Appendix, Section (c), at p. 5.

[44] "The Boren Bill: Analysis of An Upcoming Senate Vote," Campaign Practices Reports, V. 12, No. 23, Dec. 2, 1985 at pp. 1-2.

The Federal Election Campaign Act, as amended, presently provides: (1) that the contribution limitations are applicable when persons either directly or indirectly make contributions to a particular candidate through an intermediary or conduit; (2) and that such contributions are to be treated as contributions from such persons to such candidate, and (3) that the intermediary or conduit shall report and disclose to the FEC and to the intended recipient both the original sources of such contributions and the intended recipient.[45] The provision in S. 1806 would essentially amend this section by substituting for "person" everywhere it appears the phrase "person and also intermediary or conduit." This amendment would basically close the loophole in the FECA for conduit contributions through PACs by requiring both PACs and candidates to count such contributions toward the contribution limitations for PACs.[46]

Both the FECA and the FEC regulations permit the earmarking of contributions to a federal office candidate through a conduit or intermediary, including a political action committee, so long as the intermediary or conduit reports the original source of the contribution and the intended recipient of such contributions to both the FEC and to intended recipient.[47] An advisory opinion by the FEC in 1982 ruled that a plan by a union PAC which would allow union members to earmark their contributions made through a payroll deduction plan to specific candidates and committees was permissible under the FECA and the FEC regulations. In this opinion the Commission asserted that, if the PAC did not exercise any direction or control over the members' selections of candidate-recipients of earmarked contributions, the contributions so made under he earmarking plan would not count against the PAC's contribution limitation.[48] Moreover, a 1981 FEC advisory opinion concluded that a contributor could earmark a contribution to a federal office candidate through federal PAC accounts and that the earmarked contributions would be charged only to the contributor's limits and not the PAC's limits in regard to that candidate, provided that the PAC exercised no direction or control over the contributor's selection of the candidate recipient.[49] And, in a 1980 advisory opinion, the FEC ruled that an earmarking plan in which the PAC, as the conduit or intermediary, exercised control over the contributors' selection of the recipients of the earmarked contributions would result in the contributions being made by both the intermediary PAC as well as by the original contributors.[50]

The provision of S. 1806, that essentially would expand the contribution limitation's provision of the FECA [51] that would provide that earmarked contributions for conduit contributions through PACs be counted toward the contribution limitations for PACs, does not seem to pose any unusual or new constitutional problems that were not addressed in the *Buckley* decision upholding the limitations on contributions as well as the reporting and disclosure aspects of the FECA.[52] It would seem that balancing arguments could be made to justify any curtailment of the First Amendment rights of PACs concerning speech, expression, and association if Congress were to adopt such provisions prohibiting the so-called "bundling" of contributions whereby PACs can act as conduits between individual contributors and federal office candidates and thus avoid also any contribution limitations which such donations would normally incur.

Obvious balancing arguments supporting the prohibition of "bundling" by PACs would be the prevention of actual corruption or the appearance of corruption in the electoral process.[53] Moreover, it would seem that such a provision is an appropriate means by which Congress could protect the integrity of the provisions concerning contribution limitations by further limiting the influence that PACs may have on individual contributions when they are "bundled" through a PAC. It would not seem that affected contributors or the affected PAC would suffer serious First Amendment infringements on their rights of speech, expression, and association since there would still be other methods of making such contributions to federal office candidates. Such further restrictions on the contribution limitation provisions would not seem to directly infringe on the ability of contributors to express their own political views since contributions could still be directly made to the candidates. And such restrictions would seem to serve important governmental interests in preventing corruption and the appearance of corruption caused by the "bundling" of large amounts of individual contributions through PAC conduits.[54]

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[45] This section (2 U.S.C. § 441a(8)) presently reads as follows:

(8) For purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate. The intermediary or conduit shall report the original source and the intended recipient of such contribution to the Commission and to the intended recipient.

[46] 131 Cong. Rec. S14360 (daily ed. Oct. 29, 1985) (remarks and statement of Sen. Boren on S. 1806).

[47] Seed 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6 (1985).

[48] See FEC Advisory Opinion No. 1981-57, Jan. 25, 1982.

[49] See FEC Advisory Opinion No. 1981-21, June 4, 1981.

[50] See FEC Advisory Opinion No. 1980-46, June 25, 1980.

[51] 2 U.S.C. § 441a(a)(8).

[52] See generally 424 U.S. at 23-38 (contribution limitations) and 60-84 (disclosure and reporting provisions).

[53] 424 U.S. at 26.

## V. INDEPENDENT EXPENDITURES BY PACS AND MEDIA ATTRIBUTION STATEMENTS

Another provision of S. 1806 would require PACs which make independent expenditures in the print or electronic media in connection with any candidate's campaign to include the following attribution:

"This message has been authorized and paid for by (name of committee or any affiliated organization of the committee), (name/title or treasurer and/or president). Its cost of presentation is not subject to any campaign contribution limits."[55]

The FECA, as amended, presently requires certain attribution for print and electronic media advertisements involving expenditures advocating the election or defeat of a clearly identified candidate. This section of the FECA (2 U.S.C. § 441d) reads as follows:

"(a) Whenever any persons makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising, such communication—

"(1) if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized political committee, or

"(2) if paid for by other persons but authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communications is paid for by such other persons and authorized by such authorized political committee;

"(3) if not authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee.

"(b) No person who sells space in a newspaper or magazine to a candidate or to the agent of a candidate, for use in connection with such candidate's campaign, may charge any amount for such space which exceeds the amount charged for comparable use of such space for other purposes."[56]

In a 1973 decision in *United States* v. *Insco*[57] this provision (formerly 18 U.S.C. § 612) was found to be constitutional. The federal court did not find that the requirement of a attribution clause is void on its face because of overbreadth since it is applicable only to statements relating to federal office candidates and since it is limited in its coverage to requiring fairness in elections.[58] Also in 1961, a federal court in *United States* v. *Scott*[59] concluded that this provision prohibiting willful publication and distribution of pamphlets concerning a federal office candidate without disclosing the names of the persons responsible for the publication and distribution did not violate the First Amendment. The *Scott* Court found the Congress earmarked the attribution-clause provision so that the electorate would be informed and make its own appraisal of the reasons why a particular candidate was being supported or opposed by a certain individual or group.[60] In the *Scott* case, the Court, moreover, found that the defendant's theory of fear of reprisal was highly speculative and conjectural which could be used by almost anybody and that the mere possibility of reprisal was not enough to avoid prosecution under the statute and to find such statute unconstitutional.[61] In applying the balancing argument whereby the value to the public of the attribution statute is weighted against the supposed infringement of the First Amendment rights of the defendant, the *Scott* Court concluded that the statute was a valied and constitutional exercise of the legislative power of the Congress to protect the integrity of the electoral process from surreptitious publications by unknown authors.[62]

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[54] See *California Medical Ass'n* v. *FEC*, 453 U.S. 182, 193-194 (1981).

[55] See S. 1806 in Appendix infra at § (c) p. 5.

[56] 2 U.S.C. § 441d.

[57] 365 F. Supp. 1308, 1311-1312, (M.D. Fla. 1973). *Cf., Talley* v. *California*, 362 U.S. 60 (1960).

[58] Ibid.

[59] 195 F. Supp. 440, 443 (D. N.D. 1961).

[60] Ibid.

Similar arguments such as those expressed in *United States* v. *Insco* and *United States* v. *Scott* could be used to support the constitutionality of the attribution statement required by S. 1806. It seems that arguments could be made: (1) that Congress has the power under the Constitution to enact such legislation so as to protect the integrity of the electoral process;[63] (2) that such provision is not vague and overbroad in that it is limited in its converage requiring fairness in federal elections[64] by specifically requiring certain attributions for print and electronic media political advertisements without interference as to the substance of the message; (3) that the mere possibility of reprisal and the fear of reprisal because of such attribution statements are too speculative and conjectural to invalidate such provision;[65] and (4) that the interests of the Government in protecting federal office candidates from surreptitious publication by unknown authors engaging in political advertisements funded by independent expenditures outweigh the infringement on individual First Amendment rights.[66]

## VI. CONSTITUTIONALITY OF THE EQUAL OPPORTUNITIES REQUIREMENT FOR FEDERAL CANDIDATES SUBJECTED TO NEGATIVE ADVERTISEMENTS PAID FOR BY INDEPENDENT EXPENDITURES

S. 1806 proposes that federal office candidates be provided equal opportunities from broadcast station licensees when such candidates are subject to negative political advertisements which are financed by independent expenditures.[67] At issue is whether or not the proposal to grant equal opportunities and free broadcast time to federal office candidates who are either the targets of negative advertisements or who are candidates whose opponents are the beneficiaries of such advertisements, is constitutional under the First Amendment.

In the area of broadcasting, unlike other areas of the First Amendment involving the rights of speech, expression, and association, the Supreme Court in a series of cases has allowed for certain types of equalization and fairness due to the scarcity of television and radio frequencies. In the 1969 *Red Lion Broadcasting Co.* v. *FCC* decision, the Supreme Court upheld the fairness doctrine principles and the personal attack rules of the Federal Communications Commission (FCC) and found that they do not violate the First Amendment.[68] Because of the scarcity of electronic media frequencies, the Court found that Congress can enact laws to put restraints on broadcast licensees in favor of those whose views should be expressed.[69] It is the free speech rights of viewers and listeners which are paramount and not those of the broadcasters.[70] The fairness doctrine [71] essentially requires a broadcast licensee: (1) to provide coverage of public issues and (2) to present to the listeners and viewers conflicting points of view on such issues.

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[61] Id. 443.

[62] Id. 444.

[63] *Burroughs and Cannon* v. *United States*, U.S. 534, 545 (1934); *Ex Parte Yarbough*, 110 U.S. 651 (1884).

[64] 365 F. Supp. at 1312.

[65] 195 F. Suoo. at 443.

[66] Id. 444.

[67] See S. 1806, § d, pp. 5–8 infra. See also statement of Sen. David L. Boren on introducing S. 1806 131 Cong. Rec. S14360 (daily ed. Oct. 29, 1985).

[68] 395 U.S. 367, 373, 396 (1969).

[69] Id., 390.

[70] Ibid. See also *FCC* v. *Sanders Bros. Radio Station*, 309 U.S. 470, 475 (1940) and *FCC* v. *Allentown Broadcasting Corp.*, 394 U.S. 358, 361–362 (1955).

[71] A 1959 Amendment to section 315 of the Communications Act of 1934 provides in pertinent part: "Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them . . . to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance. 47 U.S.C. § 315(a).

As an extension of the fairness doctrine, the equal opportunities doctrine (or as it is popularly called the equal-time rule) is concerned with the use of broadcast facilities by candidates for public office. The equal opportunities doctrine as an amendment to the Communications Act of 1934 is stated as follows [47 U.S.C. § 315(a)]:

"If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: Provided, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section.

"No obligation is imposed under this subsection upon any licensee to allow the use of its station by any such candidate. Appearance by a legally qualified candidate on any—

"(1) bona fide newscast;

"(2) bona fide news interview;

"(3) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subjects covered by the news documentary); or

"(4) on-the-spot coverage of bona fide events (including but not limited to political conventions and activities incidental thereto);

shall not be deemed to be use of a broadcasting station within the meaning of this subsection."

Besides the four exceptions relating to certain news-type broadcast programs, the equal opportunities doctrine provides that, if a broadcast licensee permits a legally qualified candidate for public office to use a broadcast station, the licensee shall afford equal opportunities to all other such candidates for that office in the use of that station. In the *Red Lion* decision, the Supreme Court recognized that, without the equal opportunities doctrine, a broadcast licensee could ban all campaign appearances by certain candidates and broadcast only the appearance of a candidate favorable to the station.[72]

The equal opportunities requirement provides that a candidate be granted upon request of a broadcast licensee an equal amount of time at the same cost and during an equivalent time period that was afforded to another candidate for the same office. Under the so-called *Zapple* doctrine, the FCC has held that, when a broadcaster has sold time during an election to supporters of a candidate, the broadcaster is also obligated to sell time to the supporters of the opposing candidate.[73] However, in such a situation involving supporters of a candidate, free broadcast time would not have to be provided under this extension of the fairness doctrine as it would have to be when presenting nonpolitical controversial issues since it would be inappropriate to require broadcast licensees in effect to subsidize the campaign of an opposing candidate by providing free response time.[74]

Under the present law, FCC regulations, and federal court decisions, the requirement of equal opportunities in political broadcasting does not require the broadcasters to provide free time to the candidate or to the supporters of a candidate if the candidates cannot pay for the broadcast.[75] Moreover, if a broadcast licensee airs political advertisements of a PAC opposing or supporting a candidate by independent expenditures, the licensee is obligated only to offer equal opportunities to other candidates and not free time.[76]

The proposal of S. 1806 to grant free broadcast time to candidates under certain circumstances such as those candidates who are targets of negative political advertisements by PACs would not seem to violate the First Amendment rights of broadcast licensees to any greater degree than the Supreme Court has already allowed under the fairness doctrine and equal opportunities doctrine of section 315(a) of the Communications Act of 1934 as upheld in the *Red Lion* decision. The fairness principles and the equal opportunities rationale of the Supreme Court in the *Red Lion* cases would seem to be valid reasons for the constitutionality of such proposed legislation providing for free response time to candidates under certain circumstances.[77]

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[72] 395 U.S. at 378–379.

[73] See *Nicholas Zapple*, 23 F.C.C. 2d 707–708 (1970).

[74] See *Cullman Broadcasting Co.*, 40 F.C.C. 576, 577 (1963).

[75] 23 F.C.C. at 708.

[76] See, for example, *Carter-Mondale Reelection Committee*, 81 F.C.C. 2d 409 (1980). In this case the Carter-Mondale Reelection Committee sought free time on stations which had broadcast advertisements of independent political committees which had opposed their reelection. The FCC denied the complaint holding that section 315(a) of the Communications Act of 1934, as amended, requires only that a broadcast licensee offer an equal opportunity to purchase time at an equivalent cost but not free time.

[77] See S. 1806, §§ 1(e)(f)(g), pp. 6–8, 99th Cong., 1st Sess. (1985) infra in Appendix.

Such legislation arguably would not be any more intrusive on the First Amendment free speech rights of broadcasters than the fairness and equal opportunities doctrines have been on them, which doctrines the Supreme Court has found to be constitutional against First Amendment challenges in the *Red Lion* case. Because of the scarcity of electronic media frequencies, the Government is permitted to put restraints on broadcast licensees in favor of others whose views should also be expressed; moreover, it is the First Amendment rights of viewers and listeners and not those of the broadcast licensees which are paramount; and it is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas and to prevent a monopolization of the marketplace either by the Government or by a private broadcast licensee.[78]

Some of the purposes of the fairness doctrine are: (1) to require broadcast licensees to provide a balanced coverage of controversial issues [79] and (2) to require broadcast licensees to provide coverage which is fair and accurately reflects opposing viewpoints.[80]

Similarly, the proposal of S. 1806 providing for "equal time" when candidates are subject to political advertising by PACs is an attempt to provide balanced coverage as well as coverage providing for opposing viewpoints. To offset negative political advertising by independent PACs which are often better financed than many campaign committees of candidates, the "equal time" proposal would be a means of: (1) putting a candidate on the same level as an independent committee when a negative political advertisement is aired or when an opposing candidate has the benefit of the political advertisement; (2) providing fairness to the public viewers and the electorate in the presentation of contrasting viewpoints of the candidates; and (3) forcing broadcast licensees to be more responsible in airing independent political advertisements by independent or nonconnected PACs.

However, the free response time of S. 1806 would have to overcome the holding of the FCC in the *Zapple* decision [81] that it would be inappropriate to require broadcasters to provide free response time to candidates since it would have the affect of subsidizing their campaigns. It would seem that the proposed legislation should have a provision that any free response time provided to a candidate who is a target of independent political advertisements by PACs would not be considered a contribution under the FECA. Amendments to the definition section of the FECA relating to the terms "contribution" and "expenditure" should be made in a way so that when broadcast licensees provide free response time, exemptions will be allowed so that the free-time for broadcasting will neither be a contribution nor an expenditure under the FECA.[82] By exempting the free-time proposal by broadcasters from being any possible contribution or expenditure under the FECA would also seem to alleviate any problems that might arise in connection with the ban on corporate contributions or expenditures under the FECA.[83]

Moreover, the free-response time proposal, such as that incorporated in S. 1806, would not seem to affect the First Amendment rights of broadcast licensees any more than as the right of access provision for federal office candidates under section 312(a)(7) of the Communications Act of 1934 which was upheld by the Supreme Court in *CBS, Inc.* v. *FCC.*[84] The Court found that the right of reasonable access by federal candidates did not violate the First Amendment rights of broadcasters by unduly circumscribing their editorial discretion but rather balanced the First Amendment rights of federal office candidates, the public viewers, and the broadcasters. The free-time proposal of S. 1806 in comparison with the right of access provision.[85] The free-time proposal of S. 1806 in comparison with the right of access proonly to those candidates who have been targeted by independent political advertisements and paid for by independent expenditures.

Should independent or nonconnected PACs feel restrained from purchasing broadcast media time for fear that such political advertisements would trigger free-response time to candidates when they appear, there would still be other First

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[78] *Red Lion Broadcasting Co.* v. *FCC,* 395 U.S. at 390.

[79] *United Broadcasting Co.,* 10 F.C.C. 515 (1945).

[80] *1949 Report On Editorializing By Broadcast Licensees,* 13 F.C.C. 1246 (1949).

[81] In Re *Nicholas Zapple,* 23 F.C.C. 2d 707 (1970).

[82] Section 301 (8)(B) and 301 (9)(B) of the Federal Election Campaign Finance Act relating to the definitions of "contribution" and "expenditure" and exemptions from such terms would have to be amended. See the corresponding provisions in the United States Code 2 U.S.C. § 431(8)(B) and § 431(9)(B).

[83] See 2 U.S.C. § 441b relating to the prohibition of corporate contributions and expenditures.

[84] 453 U.S. 367, 396–397 (1981).

[85] Id., 394–395.

[86] See 47 U.S.C. § 312(a)(7).

Amendment outlets for the expression of their political advertisements such as in the print media which would not be subject to the free-time requirement. In *Miami Herald Publishing Co.* v. *Tornillo,*[87] the Supreme Court held that Florida's "right of reply" statute which granted a political candidate the right to equal space in the print media to reply to criticisms and attacks was unconstitutional in that it violated the First Amendment's guarantee of a free press. Thus, the free response time proposal of S. 1806 would only regulate the electronic media and not the print media.

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[87] 418 U.S. 241, 258 (1974).

# APPENDIX 10

## Analysis of the Provision in S. 1806 (Senator Boren, 99th Congress) Making the Definition of "Independent Expenditure" More Precise

### EXECUTIVE SUMMARY

The first part of this report notes the present definition of "independent expenditure" in the Federal Election Campaign Act of 1971, as amended (FECA) and explains how section (h) of S. 1806 (Sen. Boren, 99th Cong.) would amend this definition by clarifying what is "cooperation and consultation with any candidate." This amendment would essentially tighten the present definition of "independent expenditure" by lising three specific examples of what would be "cooperation and consultation with any candidate." Should expenditures be made with such cooperation and consultation, they would not be independent expenditures but rather contributions subject to various limitations or ceilings.

The second part of this report concludes that there are not any constiutional problems in the way section (h) of S. 1806 tightens the definition of "independent expenditures." The Supreme Court decision in *Buckley* v. *Valeo*, 424 U.S. 1, 46-49 (1976) is discussed especially in regard to that part of the decision analyzing the fundamental distinction between a true independent expenditure and an expenditure that is controlled and coordinated by a candidate, the latter of which would be treated as a contribution having appropriate limitations under the FECA.

Part three of this report examines the legislative history of the Federal Election Campaign Act Amendments of 1976 as to the meaning of an independent expenditure. It is noted that the legislative history of the 1974 FECA Amendments concludes that independent expenditures are costs that are incurred without any request or consent of a candidate or his agent. The clarifying regulations of the Federal Election Commission (FEC) as to independent expenditures are discussed. (See 11 C.F.F. §§ 109.1—109.3 (1985)).

Part four concludes that the present provisions of the FECA and the FEC regulations concerning independent expenditures do not appear to be precise enough to close the present loophole concerning independent expenditures. Consequently, clarifying legislation such as S. 1806 concerning independent expenditures seems to be necessitous. Also this part concludes that the amendment poses no vagueness or overbreadth problems.

### I. INTRODUCTION

One of the major provisions of S. 1806 introduced by Senator David L. Boren in the 99th Congress would expand the definition of "independent expenditure" of the Federal Election Campaign Act of 1971, as amended (FECA or Act). The present definition of "independent expenditure" under the FECA provides:

"(17) The term 'independent expenditure' means an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggesion of, any candidate, or any authorized committee or agent of such candidate." [1]

The provision in S. 1806 [2] would expand this definition of "independent expenditure" by adding the following clarifying provisions:

"(A) For the purposes of this subsection, 'cooperation or consultation with any candidate' with respect to an election cycle means, but is not limited to the following—

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[1] Pub. L. No. 94-283, 90 Stat. 479 (1976); 2 U.S.C. § 431 (17); and 11 C.F.R. §§ 100.16, 109.1—109.3, (1985).

[2] S. 1806, § (h), p. 8, 99th Cong., 1st Sess. (1985).

"(i) the person making the independent expenditure communicates with, advises, or counsels the candidate at any time on the candidate's plans, projects, or needs relating to the candidate's pursuit of nomination for election, or election, to Federal office, in the same election cycle, including any advice relating to the candidate's decision to seek Federal office;

"(ii) the person making the independent expenditure includes as one of its officers, directors, or other employees an individual who communicated with, advised or counseled the candidate at any time on the candidate's plans, projects, or needs relating to the candidate's pursuit of nomination for election, or election, to Federal office in the same election cycle, including any advice relating to the candidate's decision to seek Federal office; and

"(iii) the person making the independent expenditure retains the professional services of any individual or other person also providing those services to the candidate in connection with the candidate's pursuit of nomination for election, or election, to Federal office, in the same election cycle, including any services relating to the candidate's decision to seek Federal office."

The purpose of this provision is to essentially strengthen the definition of "independent expenditure"[3] by listing these three specific examples or situations of what would be cooperation and consultation with a candidate and thus outside the scope of any independent expenditure if there were such cooperation and consultation. Moreover, this provision would tighten the definition of "independent expenditure" by defining what constitutes independent campaign spending by clarifying the term "cooperation or consultation with any candidate." Many groups and political action committee (PACs) which are supposedly independent of a candidate can make independent expenditures attacking opposing candidates without any limitation of their expenditures. However, when such groups or PACs are staffed by former employees or consultants of a particular candidate's political committee, then, under the amended definition of "independent expenditure," such groups or PACs would not have unlimited spending limits since such amounts spent would then be considered in-kind contributions to the candidate who is benefited and thus subject to the FECA's appropriate contribution limitations.[4]

## II. CONSTITUTIONALITY OF AN AMENDMENT PROPOSED BY S. 1806 TIGHTENING THE DEFINITION OF "INDEPENDENT EXPENDITURE"

There would not seem to be any constitutional problems in an amendment to the definition's section of the FECA as proposed in S. 1806 that would tighten the definition of "independent expenditure" by specifying certain situations whereby there would be cooperation and/or consultation with a candidate. Such cooperation and/or consultation with a candidate would thus mean that in those situations there could not be unlimited expenditures of money since such expenditures would most likely be in-kind contributions to a candidate which would then be subject to appropriate limitations under the FECA.[5]

The amendment proposed by S. 1806 in clarifying what is meant in three certain situations by "cooperation or consultation" with a candidate, would aid everyone engaging in campaigns, such as candidates, political parties, contributors, PACs and even the FEC, to determine more readily whether an expenditure is truly independent which would then be without limitations under the Act or a contribution which would be limited. Such a clarifying amendment would not appear to violate any First Amendment free speech, expression, or association rights of any groups or individuals.

The Supreme Court in *Buckley* v. *Valeo* struck down limitations on independent expenditures noting that such limitations would violate the First Amendment rights of speech, expression, and association since they could not be justified in a balancing argument that they were necessary to prevent corruption or the appearance of corruption. Since independent expenditures, if they were truly independent, were further removed from a candidate and did not pose the possibility of corruption that contributions to a candidate did, they could not be limited according to the *Buckley* Court without violating the First Amendment. However, the Court in *Buckley* emphasized that, if the so-called independent expenditures were controlled by or coordinated with the candidate and his or her campaign, then such expenditures would have virtually the same value to the candidate as a contribution and would pose similar dangers of abuse. Moreover, such controlled or coordinated expenditures according to the Court in *Buckley* would be treated as contributions rather than expenditures under the Act which would then be subjected to the appropriate contribution limitations which were held to be constitutional.[7] Thus, the amendment proposed by S. 1806 clarifying "cooperation or consultation with any candidate" would essentially do legislatively what the *Buckley* Court did in making a distinction between a true independent expenditure or an expenditure that is controlled by or coordinated with a candidate and his campaign which would then be a contribution with certain monetary limitations under the FECA.

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[3] 131 Cong. Rec. S. 14360 (daily ed. Oct. 29, 1985; remarks of Sen. Boren on the introduction of S. 1806).

[4] 131 Cong. Rec. S. 16605 (daily ed. Dec. 2, 1985; remarks of Sen. Boren).

[5] See 2 U.S.C. § 441a for the appropriate limitations on contributions by persons and multicandidate political committees.

[6] 424 U.S. 1, 44–47 (1976).

In the First Amendment area, two tests are often used to determine the constitutionality of statutory provisions that affect free speech and expression rights, namely the vagueness and overbreadth tests. The vagueness test determines whether or not a statutory provision fairly informs a person of what is commanded or prohibited, and, if it does not, the provision may be unconstitutional as violative of due process.[8] And the vagueness test is often combined with the overbreadth doctrine to determine the constitutionality of a statutory provision. The overbreadth doctrine focuses on the necessity of drafting a statute that impinges on certain First Amendment rights with precision so that such rights are not violated. An overbreadth statute is one that sweeps under it coverage both protected and unprotected speech and conduct and is facially invalid.[9]

However, the amendment as proposed by section (h) of S. 1806 does not seem to pose any First Amendment vagueness problems since the criteria listed in determining what is "cooperation or consultation with any candidate" seem to be exact and precise. Moreover, the amendment of S. 1806 does not seem to pose any overbreadth problems since the clarifying amendment to the FECA's definition of "independent expenditure" does not chill any First Amendment speech as expressed in campaign expenditures since it does not prohibit or provide penalities for such expenditures but rather only makes determinations of whether such expenditures were truly independent expenditures or in fact contributions subject to certain ceilings under the FECA.

### III. LEGISLATIVE HISTORY AND FEC REGULATIONS CONCERNING INDEPENDENT EXPENDITURES

Also S. 1806 and its clarifying amendment to the "independent expenditure" definition would also seem to do in a more precise way legislatively what the legislative history of the 1974 Amendments to the FECA attempted to do by making the distinction between a true independent expenditure and a coordinated expenditure. The legislative history of the expenditure limitation provisions of the 1974 Amendments of the FECA [10] notes that independent expenditures are costs that are incurred without the request or consent of a candidate or his agent.[11] If an expenditure is made by an individual completely on his or her own and not at the request or suggestion of a candidate or a candidate's agent, it is an independent expenditure. However, if such an expenditure is made by an individual in cooperation with a candidate or his or her agent, then the amount would constitute a contribution by the individual and an expenditure by the candidate, and they would have to be reported as such.[12] Thus, any expenditures which are: (1) authorized, or (2) requested by a candidate, or (3) in cooperation with, or (4) with the consent of a candidate or his or her agents are to be considered contributions which would then be subjected to the appropriate contribution limitation provisions.[13] And the absence of any prearrangement and coordination of an expenditure with a candidate or his or her agent are the characteristcs of a completely independent expenditure.[14]

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[7] Id., 46–49.

[8] See, Black 's Law Dictionary, "Vagueness Doctrine," p. 1389 (5th ed. 1979).

[9] See, Black 's Law Dictionary, "Overbreadth Doctrine," p. 994 (5th ed. 1979). See also, *Buckley* v. *Valeo*, 424 U.S. at 20–30 (discussion of overbreadth doctrine at 39–45, 74–81 (discussion of vagueness doctrine).

[10] Public L. No. 93–443, tit. I. § 101(e)(1), formerly 18 U.S.C. § 608(e)(1) (repealed).

[11] H. R. Rep. No. 93–1239, 93d Cong., 2d Sess. 6 (1974).

[12] S. Rep. No. 93–689, 93d Cong., 2d Sess. 18 (1974).

[13] H. R. Rep. No. 93–1237, 93d Cong., 2d Sess. 55 (1974).

[14] See also *Bucky* v. *Valeo*, 424 U.S. at 47.

Moreover, the clarifying amendment of section (h) of S. 1806 to the "independent expenditure" definition of the FECA would complement the regulations of the Federal Election Commission (FEC) concerning independent expenditures and aid in further closing this loophole in the FECA by more effectively ensuring the independence of groups and individual making expenditures in federal elections and by prohibiting certain indirect and covert efforts of coordination, cooperation, or consultation with any candidate.

The Federal Election Commission's regulations relating to independent expenditures concern such matters as: (1) definition of "independent expenditure," "agent," "clearly defined candidates," and "person;" (2) the reporting of independent expenditures by persons other than a political committee; and (3) non-authorization notices by persons making independent expenditure.[15] According to the FEC regulations, an expenditure is independent only if is made without: (1) the cooperation, (2) the prior consent of, (3) the resultation with, (4) the request of, or (5) the suggestion of a candidate, or any agent of an authorized committee of a candidates.[16]

Because of the significant amounts of independent expenditures in recent federal elections,[17] the FEC has been urged to tighten the definitions of "coordination" and "agent" in order to limit and restrict any contacts and communications between political committees and federal office candidates or their agents and authorized committees.[18] It has been argued that the current regulations regarding independent expenditures are insuffficent and result in fraudulent independence that allow individuals, PACs, and other nonparty multicandidate committees to give indirect advice and assistance to candidates while still remaining independent.[19] And the argument is made that the FEC should close this loophole by issuing such new independent expenditure regulations which would ensure the effective independence of groups and individuals and which would prohibit any indirect and covert efforts of coordination. However, an argument is made that the current FEC regulations on independent expenditures would provide sufficient safeguards if they were strictly enforced by the FEC.[20] In any event, the clarifying amendment of S. 1806 would aid in closing the independent expenditure loophole.

## IV. CONCLUSION

The present provisions in the FECA and the FEC regulations concerning independent expenditures do not appear to be precise enough to close the loophole that allows certain indirect and covert coordination, cooperation, or consultation with federal office candidates and their campaigns and that allows certain individuals, groups and PACs to circumvent the contribution limitation provisions of the FECA.[21] Consequently, legislation such as section (h) of S. 1806, with its clarifying amendment to the definition of "independent expenditure" seems to be necessitous to aid in closing the independent expenditure loophole. And, if the *Buckley* Court's distinction between controlled or coordinated expenditures, which essentially are to be treated like contributions, and independent expenditures is to have any merit, then it would seem that the amendment provision of S. 1806 providing for a more complete and precise definition of "cooperation or consultation with any candidate" a necessary amendment that would not only clarify but also complement legislatively the *Buckley* Court's distinction between a controlled expenditure and an independent expenditure.

The criteria used in the amendment proposed by S. 1806 in order to determine whether or not there has in fact been any effective cooperation or consultation with any candidate include the following: (1) communicating, advising, or counseling the candidate; (2) using officers, directors or other employees who have communicated with, advised, or counseled the candidate; and (3) retaining the professional services of any individual who also has also provided similar services to the candidate.[22] The use of such criteria in determining whether an expenditure should be treated as a contribution or an independent expenditure under the FECA, does not seem to pose any First Amendment vagueness problems since such criteria seem to be exact and precise in stating what situations are necessary to establish a quid pro quo cooperation or consultation with any candidate.[23]

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[15] 11 C.F.R. §§ 109.1 to 109.3 (1985).

[16] 11 C.F.R. § 109.1(a) (1985).

[17] See FEC Press Release on independent expenditures in congressional and presidential elections from 1979 to 1984, Sept. 9, 1985, pp. 1–4.

[18] Campaign Practices Reports, V. 9, N. 4, p. 6, March 1, 1982.

[19] Ibid.

[20] Ibid.

[21] See, J. Relman, "Making Campaign Finance Law Enforceable: Closing The Independent Expenditures Loophole," 15 Univ. of Michigan J. of Law Reform, 363, 375, Winter 1982.

[22] See generally, S. 1806 (h) supra.

Moreover, because of fundamental First Amendment rights in this area, caution should be taken in drafting new legislation so as not to involve the overbreadth doctrine [24] and chill the First Amendment rights of speech, expression, and association of persons engaged in federal election campaigns because of certain communications with a candidate and his or her committees. However, since the amendment of S. 1806 is only a clarifying amendment and does not prohibit or chill speech, expression, and association but only makes determinations concerning whether certain expenditures in federal elections are to be considered truly independent or contributions with required limitations under the FECA, there do not seem to be any First Amendment overbreadth problems.

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[23] See the discussion in the *Buckley* decision whereby the Supreme Court examined and upheld section 434(e) of the FECA Amendments of 1974 relating to a disclosure provison after analyzing it for any vagueness problems. Even though the *Buckley* Court found that provision to be constitutional, it examined that provision under the vagueness doctrine to determine whether it would overcome the problems of vagueness since the violations of its terms carried criminal penalties and since the fear of incurring such sanctions may deter those who seek to exercise First Amendment rights. 424 U.S. at 76–78.

[24] The overbreadth doctrine is essentially concerned with a statute's "chilling effect" on protected First Amendment activities as well as the extent to which a statute operates as a disincentive to certain activities that come within the protection of the First Amendment. See. *Zwickler* v. *Koota*, 389 U.S. 241, 256, N. 2 (1967). And see, Note, "First Amendment Overbreadth Doctrine," 83 Harv. L. Rev. 844, 853 (1979).

# APPENDIX 11

## A POLICY ANALYSIS OF THE BOREN PROPOSAL FOR CAMPAIGN FINANCE REFORM

### ABSTRACT

A proposal by Senator Boren has become a focal point of efforts to amend the campaign finance laws in the 99th Congress. Following an introductory section on the current law, issues in the campaign finance debate and recent congressional activity in the area, this report provides a discussion and policy analysis of the major provisions of the Boren proposal.

### INTRODUCTION

Financial activity of campaigns for Federal office is regulated by laws passed in the early 1970s and amended several times since then—primarily the Federal Election Campaign Act of 1971, the Presidential Election Campaign Fund Act, and the Presidential Primary Matching Payment Account Act. These laws were enacted to remedy widely perceived shortcomings in the existing law, the Corrupt Practices Act of 1925, and in response to reports of campaign finance abuses over the years, culminating in the Watergate scandal of 1972-1974.

Essentially, a dual system for Federal campaigns exists today: a Presidential system, funded largely from public monies, with concomitant limits on campaign expenditures, and a congressional system, funded solely by private donations and free of circumscriptions on campaign spending. It its 1976 decision in *Buckley* v. *Valeo*, the Supreme Court struck down spending limits in congressional races (enacted in 1974) on the ground that they were an infringement on First Amendment freedoms; the Court specifically allowed spending limits in Presidential elections when linked to a public funding program.

Despite the differences in these systems, all campaigns for Federal office and all political committees operating at the Federal level are governed by uniform disclosure requirements and by limitations on contributions, whether by individuals, interest groups, or political parties. Individuals are allowed to contribute up to $1,000 to a Federal candidate per election, $20,000 to a national party committee per year, and $5,000 to any other political committee (e.g., a PAC) per year; there is an overall limit of $25,000 on all political contributions per year. Multicandidate committees (which include most political action committees and most party committees) may contribute up to $5,000 per candidate per election, $15,000 to a national party committee, and $5,000 to another political committee; there is no aggregate limit on contributions by multicandidate committees. National party committees may assist their candidates for Federal office beyond direct contributions by means of coordinated expenditures on their behalf. These expenditures are also subject to limits, although they are set much higher than are the limits on contributions.

### *Campaign finance issues in recent years*

The limits on contributions by individuals, PACs, and parties, in conjunction with an absence of limits on House and Senate campaign expenditures, have thus formed a key element in the flow of money into Federal elections in the past ten years. Campaign expenditures have risen greatly during this period, even exceeding the overall increase in cost of living. According to campaign finance authority Herbert Alexander, Director of the Citizens' Research Foundation, an esitmated $540 million was spent on all elections in the United States in 1976, rising to $1.8 billion in 1984.[1] Candidates for the House and Senate spent a total of $115.51 million in 1976; in 1984, the total reached $374.1 million. The average cost for a winning House candidate rose from $87,200 in 1976 to $288,636 in 1984; the average cost for a successful Senate candidate increased from $609,100 in 1976 to $2,954,545 in 1984.[2]

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[1] Center for Responsive Politics. Money and Politics: Campaign Spending Out of Control. Washington, Center For Responsive Politics, 1985. p. 3

Such data are cited by many as evidence that our democratic system of government has suffered as the costs of running for public office have grown to what are often considered exorbitant levels. Specifically, it is argued that candidates and office-holders must spend too much time raising money, at the expense of performing their public duties or their efforts to communicate with voters. To the extent that they may feel it necessary to tailor their appeals to the most affluent and most narrowly "interested" sectors of society, questions may be raised about the resulting quality of representation of all elements of society. Alternatively, many see the spiriling campaign costs resulting in greater numbers of wealthy individuals seeking office, thereby denying the opportunities for service to many talented people who lack the financial resources or contacts with which to adequately finance campaigns. Furthermore, the high cost of elections is cited by many observers as a contributing factor toward public alienation from the political process.

The increasing costs of getting elected to office and the surrounding issues thereof are very much linked to the increased reliance by candidates upon contributions from special interest political action committees (PACs). Here, too, the statistics reveal enormous growth. The number of Federal PACs quintupled in number between 1974 and 1984, while the amount they contributed to House and Senate candidates during that period increased from $12.5 million to $105.3 million (even factoring for inflation, this represented a 300 percent raise). PAC contributions constituted 15.7 percent of total receipts by House and Senate general election candidates in 1974; the comparable figure for 1984 was 29.3 percent.[3] The percentage of PAC money among overall receipts was even higher among certain categories in 1984: among House candidates only, it was 37.2 percent and among House incumbents seeking re-election, it was 43.2 percent.[4] Furthermore, whereas nine percent of House winners in 1974 received at least half their receipts from PACs, in 1984, that figure was 36 percent.[5]

To many critics of the current system, these data on PAC contributions signal the most troubling issues in the debate over campaign financing: are the Nation's policy-makers becoming so beholden to special interests for help in getting elected that their ability to make policy decisions that serve the national interest is impaired? Are PACs overshadowing the role of average citizens in the electoral process? Does the appearance of quid pro quo relationships between special interest givers and politician recipients, whether or not they actually exist, seriously undermine public confidence in the political system? Observers disagree over whether the high cost of campaigns has increased the importance of PACs or whether the readily available source of campaign money by PACs has fueled the overall increases in campaign costs. Nonetheless, the issues raised by the growth in importance of PACs as a funding source for politcal campaigns have been the primary force behind the campaign finance debate in the past ten years.

### *Congressional activity*

The issues of rising campaign costs and growing importance of PACs as a funding source have formed the backdrop of an intensive debate since the late 1970s, both within Congress and in the academic community. Apart from the Federal Election Campaign Act Amendments of 1979 (P.L. 96-187), which were largely intended to clarify and streamline the earlier statutes, the last major changes in the Federal campaign finance law occurred with the passage of the F.E.C.A. Amendments of 1976—P.L. 94-283. In October 1979, in response to concern over the growing importance of PACs in congressional campaign financing, the House passed, by a 217-198 vote, the Obey-Railsback Amendment, which featured the following provisions: a

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[2] Calculated from: U.S. Federal Election Commission. FEC Releases Final Report on 1984 Congressional Races (press release): Dec. 8, 1985. p. 2.

[3] U.S. Library of Congress. Congressional Research Service. Political Action Committees: Their Evolution, Growth and Implications for the Political System. Joseph E. Cantor. Washington, 1984. (Report no. 84-78 GOV). Addendum, April 21, 1986, pp. 2, 5.

[4] Calculated from: U.S. Federal Election Commission. FEC Releases Final Report on 1984 Congressional Races (press release): Dec. 8, 1985. p. 6. (House percentage based on net receipts of $196,071,328 and PAC contributions of $72,895,562; House incumbents percentage based on Democrats' net receipts of $80,870,876 and Republican receipts of $50,597,557—for a total of $131,468,433—and on Democrats's PAC contributions of $37,590,691 and Republicans' PAC contributions of $19,196,152—for a total of $56,786,843.)

[5] Center for Responsive Politics, Money and Politics, p. 12; and Lardner, George, Jr. One-Third of House Members Relied Mainly on Interest-Group Donations. Washington Post, June 12, 1985: p. A14.

$70,000 aggregate limit on PAC receipts by House candidates ($85,000 in case of a runoff election) and a $6,000 per election cycle limit on PAC contributions to House candidates ($9,000 in case of a runoff)—the latter provision constituting a decrease from the existing $10,000 (or $15,000) limit; among the other provisions of the Amendment was one declaring that all contributions delivered by a PAC to a candidate, including earmarked donations, would count against that PAC's contribution limit.[6] A threatened filibuster kept the measure from being considered in the Senate during the 96th Congress.[7]

Although congressional interest in amending the Federal campaign finance laws generally waned in the late 1970s, as measured by the number of bills introduced and the amount of time devoted to hearings, there has been a marked increase in the level of interest and activity in the 1980s. Since the 97th Congress began, 19 days of hearings have been held on campaign finance reform proposals by the Senate Rules and Administration and House Administration Committees: four days in the 97th Congress,[8] twelve days in the 98th Congress,[9] and, thus far, three days in the 99th Congress.[10] Furthermore, there has been an increase not only in the number of campaign finance-related measures but in the variety of approaches included therein, as well.

## THE BOREN PROPOSAL

On December 2, 1985, Senator David Boren offered an amendment to S. 655 (the Central Interstate Low-Level Radioactive Waste Compact), limiting PACs and curbing independent expenditures and other controversial campaign finance practices. Amendment No. 1168, which was based on Senator Boren's S. 1806, was reminiscent of the 1979 Obey-Railsback Amendment and included the following major provisions:

An aggregate limit on PAC contributions which can be accepted by House and Senate candidates;

A decrease in the limit on PAC contributions and an increase in the limit on individual contributions to Federal candidates;

A requirement that individual contributions to Federal candidates for which a PAC serves as a conduit must count toward that PAC's contribution limit (the anti-bundling provision);

A fuller disclaimer on independent expenditure advertisements;

A tightened definition of "independent expenditure"; and

A requirement that the media grant free response time to candidates opposed by independent expenditures.

After two days of debate, the Senate voted 7-84 against tabling the Boren amendment,[11] thus signaling a continuing interest in the proposal; however, the measure was removed from further consideration at that time. Senator Boren said that his proposal would receive more intensive examination by the Senate Rules and Administration Committee, thus making Senate action possible later in the 99th Congress.[12] The Rules and Administration Committee held hearings on the Boren proposal on January 22 and March 27, 1986. The remainder of this report offers a description and analysis of the major provisions of the Boren proposal.

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[6] Federal Election Campaign Act of 1971 Amendments. Debate and Vote in the House. Congressional Record, v. 125, Oct. 17, 1979: 28659-28660.

[7] Buchanan, Christopher. Obey-Railsback Plan Stalled in the Senate by Threat of Filibuster. Congressional Quarterly Weekly Report, v. 38, Jan. 5, 1980: 33.

[8] U.S. Congress. Senate. Committee on Rules and Administration. Application and Administration of the Federal Election Campaign Act of 1971, As Amended. Hearings on S. 1550, S. 1766, and S. 1851, 97th Cong., 1st Sess., Nov. 20 and 24, 1981. Washington, U.S. Govt. Print. Off., 1982. 369 p.; and U.S. Congress. House. Committee on House Administration. Task Force on Elections. Contribution Limitations and Independent Expenditures. Hearings; 97th Cong., 2nd Sess., June 10 and July 28, 1982. Washington, U.S. Govt. Print. Off., 1982. 437 p.

[9] U.S. Congress. Senate. Committee on Rules and Administration. Campaign Finance Reform Proposals of 1983. Hearings, 98th Cong., 1st Sess., Jan. 26 and 27, May 17, and Sept. 29, 1983. Washington, U.S. Govt. Print. Off., 1984. 783 p.; and U.S. Congress. House. Committee on House Administration. Task Force on Elections. Campaign Finance Reform. Hearings, 98th Cong., 1st Sess., June 9, 16, 21, and 23, July 8, Aug. 22 and 23, and Oct. 12, 1983. Washington, U.S. Govt. Print. Off., 1983. 837 p.

[10] Hearings (as yet unpublished) held by the Senate Committee on Rules and Administration on Nov. 5, 1985, Jan. 22, 1986, and Mar. 27, 1986.

[11] Central Interstate Low-Level Radioactive Waste Compact. Debate and Vote in the Senate. Congressional Record [daily ed.], v. 131, Dec. 3, 1985: S16697.

[12] Ibid., p. S16697-16698.

*Aggregate PAC receipts limit*

While existing law limits the amount a PAC may donate to a Federal candidate, there is no limit on total contributions by a PAC or on the amount of PAC donations a candidate may accept. The Boren proposal imposes a limit on total receipts from multicandidate political committees[13] as follows: to House candidates in a general or special election (including any primary, convention or caucus related thereto)—$100,000, or $125,000 if the candidate is opposed in both the general (or special) and primary elections, plus an additional $25,000 if there is a runoff election, as well; to Senate candidates in a general or special election (including any primary, convention, or caucus related thereto)—the greater of $175,000 ($200,000 if the candidate has primary and general election opposition) or $35,000 multiplied by the number of congressional districts in the State, up to a maximum of $750,000, plus, in the event of a runoff election as well, the greater of $25,000 or $12,500 multiplied by the number of congressional districts in the State.

This provision represents the heart of the Boren proposal, its objective being to limit the degree of reliance by congressional candidates on special interest campaign donations. They would argue that interest groups have an appropriate role to play in the political process but that they must not be allowed to play too great a role, lest it become impossible for government to make public policy which serves the national interest. As the cost of getting elected to office has risen dramatically, coupled with the proliferation in the number of PACs and the growth in their fund-raising capacity, candidates have in the past ten years turned increasingly to PACs as a source of campaign funds. (This growing reliance on PAC receipts is demonstrated by the data presented in page four.) Not only do the PACs possess an abundance of much-needed money, but it can be raised in a far more cost-efficient manner than from individuals (because of such factors as a higher contribution limit for PACs, their centralization in Washington, etc.). Critics of PACs express the concern that as a result of excessive reliance on campaign money from organized interest groups, the legislator will tend to give undue weight to that group, at least in terms of access, if not in shaping his votes on legislative issues. Apart from the question of whether a quid pro quo relationship is established through the donation from the PAC to the policymaker, critics contend that the appearance of such is widespread among the public and seriously erodes the level of public confidence in the governmental process.

The Boren proposal attempts to circumscribe the importance of interest groups in funding campaigns and hence to limit their potential form influence by capping the amount of PAC money congressional candidates can accept. Had the PAC ceilings in this proposal been in effect in 1984, PAC receipts would have been cut drastically—from $28 million to $14 million among general election candidates for the Senate.[14] House candidate PAC receipts would have been sharply reduced as well, particularly among incumbents, who average $137,832 in PAC donations; the top recipients of PAC money among House candidates raised between $231,188 and $665,611 from this source.[15]

Opponents raise objections to the PAC receipts limit on both philosophical and practical grounds. Philosophically, many disagree with the basic contention that PACs pose a threat to the democratic process. This view holds that interest groups have always attempted to influence the making of public policy and that this is to be expected in a pluralistic society. Furthermore, there are two factors which tend to mitigate against any one interest or faction gaining undue or corrupting influence: the natural competition between opposing interests and the campaign finance disclosure requirements which facilitate public scrutiny of financial activity. Support for the flourishing of PACs is based on the view that public policy which serves the "national interest" inevitably emerges from a process in which special interests compete and policy-makers forge compromise; hence, the sum total of the special interests equals the national interest. PAC supporters also reject the allegation that legislators' votes may be influenced by sources of campaign money, insisting that donations are generally given to reward past support and that roll call votes which indicate alignment between an interest group's position and recipients of its PAC money is hardly surprising or suspicious.

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[13] As defined in 2 U.S.C. 441(a)(4), a multicandidate political committee is a political committee which has been registered for at least six months, which has received contributions from more than 50 persons, and has made contributions to at least five Federal candidates. Most PACs (the term PAC is a colloquial expression) are multicandidate committees, and henceforth in this report, the term "PAC" will be used to mean multicandidate political committee.

[14] Senate May Soon Consider PAC-Limit Proposal. Common Cause News: Nov. 5, 1985. p. 3.

[15] U.S. Federal Election Commission. FEC Releases Final Report on 1984 Congressional Races (press release): Dec. 8, 1985.

Numerous objections are made to the proposal from a practical standpoint, as well. First, there is reason to believe that a PAC receipts limit might prove to be a hindrance primarily to the less affluent and less well-organized interest groups, who may not be able to raise and target their campaign money early enough to give candidates before they reach their limits; to the extent this would occur, the political leverage of the better organized, more resourceful interests might become even more pronounced, and the theory of competing interests balancing each other might become more problematic.

Second, many have charged that this provision will work as an "incumbent protection measure" by denying an important potential source of funds to challengers. This is a corollary to the theory that anything which limits the amount of money candidates can spend—a limit on receipts indirectly may limit what can be spent—works to the advantage of the better known candidate, usually the incumbent. A first glance at the stastics makes this proposition doubtful: in 1984, the average PAC receipts for House incumbents was $137,832 while the average for Housee challengers was $30,270; hence on average, the PAC receipts limit would have been far more burdensome to incumbents. However, in the 16 cases in which a challenger defeated a House incumbent in 1984, the average PAC receipts of the challenger was $144,258.[16] Thus the ability to spend enough money to make the races competitive by those challengers with the greatest opportunities for upsetting incumbents (around 95 percent of whom are generally re-elected) would have been hampered by the Boren limit. On the other hand, 73 percent of PAC donations to House general election candidates was given to incumbents, and the PAC receipts limit could work to prevent incumbents from stockpiling huge warchests (largely comprised of PAC money) which scare challengers off and make races uncompetitive before they even begin.

A third major objection to the PAC receipts limit (and the decreased PAC limit, as well) is that any effort to curb PACs seeking to give directly to campaigns will serve as an incentive for more PACs to engage in independent expenditures. This form of campaign activity, which is not subject to any expenditure limitations, is viewed with alarm by many observers because of the lack of accountability by individuals and groups waging their own campaigns on behalf of candidates. Clearly, there is the risk that more PACs will enter into independent expenditure activities if their ability to play a direct role in campaigns is circumscribed. This risk may be lessened to some extent by Boren provisions on independent expenditures (to be discussed below) and also by the inherent difficulties in engaging in independent expenditures; it is possible that only the most resourceful and determined PACs may find such activities worth the investment of time, money and effort, although certainly some will indeed move in that direction.

One additional objection to this provisions pertains to the bill's use of the term "multicandidate political committees" to refer to political action committees. By qualifying as multicandidate committee, a political committee may contribute up to $5,000 per candidate, per election, rather than $1,000; therein lies the significance of the term. It can and does include both non-party committees (i.e., PACs) and party committees. Hence, by placing the aggregate receipts limit on contributions by "multicandidate political committees," this bill would technically affect the ability of the political parties to contribute to their candidates, something clearly not intended in the statements by the bill's sponsors and a policy contrary to a significant body of opinion that the parties should be allowed to play a greater, not lesser, role in campaign financing. It is worth noting, however, that the FEC's regulations, in 11 C.F.R. 100.5, draw a distinction between the terms "multi-candidate committee" and "party committee" by citing the two terms (under subsection (e)) as "examples of political committees." Hence, there is reason to believe that, in spite of a potentially confusing choice of language in the drafting of this bill and in view of both the FEC's distinction in its regualtions and the statements of the bill's sponsors, the courts might well construe its provisions as restricting only contributions by PACs and not of parties as well. Nonetheless, by using the term "non-party political committees," the bill would have avoided this confusion.

*Adjustment of PAC and individual contribution limits*

There is considerable evidence that as the role PACs play in the financing of campaigns has increased in the past ten years, the role of individual citizens has shrunk. One prominent study showed that among House general election candidates, the share of campaign receipts provided by PACs increased from 17 in 1974 to 36 percent in 1984, while the share provided by individuals declined from 73 percent to 47 percent in that same period; among Senate general election candidates, the PAC share of total receipts increased from 11 percent in 1974 to 18 percent in 1984, while the share provided by individuals declined from 76 percent to 16 percent in this period.[17]

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[16] Ibid. (Calculations by CRS).

The Boren proposal seeks to reverse this trend, in part, by decreasing the limit on contributions by PACs from $5,000 to $3,000 and raising the limit on contributions by individuals from $1,000 to $1,500. The simultaneous adjustment of these two figures is intended to promote two overlapping goals: restricting the potential for interest groups to influence elections and increasing the opportunities for individual citizens to play a role in elections, as a counterforce to the PACs. Thus, according to the Boren supporters, not only should PACs be curbed but they should also be placed on a more equal footing with individuals. This proposal would narrow the ratio between what a PAC and an individual may contribute from 5:1 to 2:1, and the intention of its supporters is that individuals would become a more attractive funding source vis-a-vis PACs to candidates concerned with the cost-efficiency of raising campaign money.

The current contribution limits were established in the Federal Election Campaign Act Amendments of 1974 and have never been adjusted for inflation (in contrast with certain expenditure limits, such as in Presidential elections). The figures established in 1974 as meaningful boundaries between acceptable and excessive levels of contributing have been rendered far less meaningful by inflation during the last twelve years; the $1,000 donation in 1974 was worth $483 in 1985, and the $5,000 donation in 1974 was worth $2,417 in 1985.[18] As the costs of campaigning for public office have increased greatly, the ability of candidates to raise money has been made more difficult because of the fixed contribution limits.

Even apart from the issue of attempting greater balance among funding sources for political campaigns, the inflation factor has added greatly to the support for increasing the limit on individual contributions. It is a change which has been recommended in recent years by many campaign finance experts and study groups, many of whom have urged an even greater increase in the limit—$1,500 does not even account for the increase in cost-of-living since 1974. Support for this change is based on an acceptance of the premise that it is advisable to curb the role of wealthy donors but that the line between small giver and wealthy donor has changed over the years and that moving slightly in the direction of allowing the large contributors is an acceptable cost for reducing the role of special interests.

The principal argument against increasing the individual limit is that a $1,000 contribution, even if worth less than twelve years ago, is still beyond the reach of the vast majority of Americans, to say nothing of a $1,500 contribution. Futhermore, although it may be a worthy goal to allow a greater participation in politics by citizens giving as individuals (rather than through interest groups), one should not confuse this to mean that raising the contribution limit for individuals means opening the door to participation by average citizens or small givers. The same study cited at the beginning of this section showed that individual contributions to House candidates of more than $200 increased from 22 to 25 percent of all receipts between 1974 and 1984, while contributions of under $200 decreased from 50 to 22 percent of receipts in this period; among Senate candidate receipts, individual contributions of more than $200 rose from 34 to 36 percent, while those of under $200 decreased from 41 to 26 percent.[19] Thus, it is the small donations which have been on the decline, and one cannot argue that the current limit, set as high as it is to most Americans, discourages the small givers who theoretically, if not in reality, represent the masses of citizens. (If participation at that level is desired, a more appropriate method might be a 100 percent tax credif for donations of $100 or less, such as the provision in the House-passed version of H.R. 3838, the Tax Reform Act of 1985; the merits and drawbacks of this proposal, however, are not discussed in this report.)

The proposed decrease in the limit on PAC contributions from $5,000 to $3,000 is, like the aggregate PAC receipts limit, similar to one of the key provisions of the

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[17] U.S. Congress, House. Democratic Study Group. Troubling Trends in Election Financing . . . Grassroots Money Shrinks as PAC Money Grows. Special Report, no. 99-22, Oct. 22, 1985. p. 31, 35.

[18] Calculations based on implicit price deflators for gross national product from: Economic Report of the President: Transmitted to the Congress February 1986, Together with the Annual Report of the Council of Economic Advisors. Washington, U.S. Govt. Print. Off., 1986. p. 256.

[19] U.S. Congress, House. Democratic Study Group, Troubling Trends in Election Financing.

1979 Obey-Railsback Amendment. It has been proposed in many quarters, and some have suggested making the limit even lower (e.g., $1,000). The lowered limit is consistent with efforts to reduce the role PACs play in electoral politics, by making them a less attractive source of funds to candidates. In light of the contribution patterns of PACs to date, the lowered limit would also constitute a greater restraint on the largest, most affluent (and powerful) PACs, those most likely to reach the current $5,000 limit; the vast majority of PACs rarely, if ever, make such large contributions to any candidate. (Labor PACs, and to some extent trade association PACs, tend to give larger donations and would be more affected by the decreased limit than would corporate PACs, which are greater in number but which tend to give much smaller donations.)[20] Furthermore, the lower limit would achieve the specific goal of placing individual citizens on a more equal footing with organized interests.

In light of the data presented above on the effect of inflation on the existing limits, one may question the appropriateness of lowering the PAC limit further. Such a move might be viewed as overly harsh or even punitive, negating any evidence of beneficial functions served by PACs or the appropriate role they play in our political system. From a practical standpoint, stringent measures to limit the role of PACs (which this proposal constitutes, especially when combined with the aggregate receipts limit) increase the possibilities of forcing them into other, perhaps less salutary, ways of influencing the political process; this primarily may mean independent expenditures and bundling. The Boren proposal anticipates this possibility and attempts to rectify it by imposing restraints and disincentives to independent expenditures, but it is not clear that other, as yet unforeseen, avenues might not be explored by PACs intent on spending their money to achieve their political goals.

### *Anti-bundling provision*

This provision is intended to prevent a PAC or (to a lesser extent) a party committee from circumventing the intent of the contribution limits by collecting and forwarding contributions to a candidate after it has made the maximum allowable contribution to that candidate. The term "bundling" refers to the practice of collecting checks from individuals made payable to a candidate and forwarding them in "bundles" to the candidate, in order for the candidate to know who is responsible for raising the money.

The current law, in 2 U.S.C. 441a(8), states:

"For purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate. * * *"

The statute further requires, as amplified in 11 C.F.R. 110.6, that contributions which are earmarked or directed through a conduit must be reported as such by the conduit and by the candidate receiving the donations.

The Boren proposal would add the words "and also the intermediary or conduit" after "person"—the second time it appears in the above paragraph, thus making contributions passed through an intermediary count as a donation from that intermediary (and not just from the donor) for purposes of the contribution limits. This would affect not only the practice of bundling but earmarking, as well, whereby a PAC gives its contributors the option of designating a preferred beneficiary of their donations to the PAC; that money passes through the bank account of the PAC on its way to the candidate but counts toward the contribution limit of the individual, not the PAC.

The common thread between earmarking and bundling is that the discretionary power over the distribution of the funds rests with the individual. Hence, current law treats an earmarked or bundled donation solely as a donation from the individual, for purposes of the limits. The limits are basically intended to prevent the accumulation of too much political power by any individual or group through the vehicle of campaign contributions. This provision of the Boren proposal seems to recognize that power can be accumulated not only by those making contributions but by those collecting them—in other words, the fundraisers.

Bundling as a means of circumventing the intent of the law had its origins in the practices of corporations which, since the Tillman Act of 1907 (34 Stat. 864), have been prohibited from contributing money in Federal elections. Many corporations collected checks from their executive employees and turned them over to favored candidates in bundles; it was understood that the interests of the business were thus being represented.[21] This practice apparently waned considerably once the business community became very involved in organizing PACs in the 1970s, thus discovering a more direct and legally-sanctioned method of assisting sympathetic candidates. More recently, there is evidence that PACs have rediscovered the concept of bundling, as a means of helping candidates beyond their ability to do so under the $5,000 contribution limit.[22]

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[20] Sabato, Larry J. PAC Power: Inside the World of Political Action Committees. New York, W.W. Norton and Co., 1984: 84-86.

This provision essentially says that the ability of PACs and other political committees to raise large sums of money for candidates and to turn them over in such a manner that the candidate knows what interests are being represented crates just as much opportunity for quid pro quo relationships as if the PAC were to contribute the same amount directly. Thus, bundling constitutes a loophole, which, under this proposal would be closed.

Opponents of this provision would argue that it is yet another example of excessive government tampering with the electoral process. Not only is the donation required to be reported by the candidate, along with indication of its having been collected by an intermediary, but the intermediary (i.e., the PAC) must report the donation, as well. Because all of this is a matter of public record, the electorate may make a judgment as to whether any particular interest is exerting too much influence with a particular candidate for office. Thus, it is unfair to suggest that as a matter of practice anything sinister or corrupt is intended. So long as the money raised is given voluntarily, free of coercion and within the contribution limits affecting the individual, there is no reason for alarm. Apart from the philosophical objections is the concern that such a provision might prove to be unenforceable, as PACs may continue the practice quietly and with no record of such.

*Independent expenditures*

Under 2 U.S.C. 431 (17), "independent expenditure" is defined as:

"* * * an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate."

These expenditures involve direct communications with voters (i.e., through television, radio, newspapers, mailings, etc.) in support of or opposition to candidates by individuals or groups not associated with those candidates or their opponents. Under the Supreme Court's ruling in *Buckley* v. *Valeo* [424 U.S. 1 (1976)], limits on independent expenditures were ruled unconstitutional because "the independent advocacy restricted by the provision does not presently appear to pose dangers of real or apparent corruption comparable to those identified with large campaign contributions."[23] With campaign contributions subject to limits and with independent expenditures free from circumscription, some individuals and groups (i.e, PACs) have turned to independent expenditures in recent years as a means of influencing elections. The following chart reports levels of such expenditures since 1980.

INDEPENDENT EXPENDITURES IN FEDERAL ELECTIONS: 1980–84

[Dollar amounts in millions]

| Election cycle | Presidential races | Congressional races | Total |
|---|---|---|---|
| 1979–80 | $13.7 | $2.3 | $16.1 |
| 1981–82 | (1) | 5.75 | 5.75 |
| 1983–84 | 17.5 | 6.0 | 23.5 |

[1] Not available.

Source: U.S. Federal Election Commission. FEC Reports 1983–84 Independent Spending Activity (press release): Oct. 4, 1985.

To many observers, the increasing levels of independent expenditures have undermined the effect of the contribution limits, while constituting a form of political campaigning which is relatively unaccountable (in contrast with campaigns waged directly by the candidates, which may fairly be judged by the electorate at the polls). Furthermore, much of the independent expenditure activity in recent years has been conducted by ideological PACs, whose injection of highly charged emotional issues into political campaigns has led to charges that the level of political debate is thus undermined, as well.

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[21] Epstein, Edwin M. An Irony of Electoral Reform. Regulation, v. 3, May/June 1979. p. 35.

[22] Jackson, Brooks. Insurance Industry Boosts Political Contributions As Congress Takes Up Cherished Tax Preferences. Wall Street Journal, Oct. 10, 1985. p. 64.

[23] 424 U.S., p. 45.

Not everyone views independent expenditures with alarm, however. At least theoretically, they constitute the exercise of free speech by voters seeking to promote their political views among other voters. Their messages may well fall outside of the parameters of political debate, as dictated by the candidates themselves, and they may indeed raise issues which result in confusion or discomfort among the electorate and the political establishment. Therein may lie an important benefit for the political system, as these independent communications may serve as pressure (or safety) valves, allowing different viewpoints—perhaps unpopular, perhaps held by minority factions—to be heard. That the right of citizens to engage in this activity is protected by the Constitution is not surprising, in view of the fact that the Constitution bestows no monopoly on controlling political debate on any one or any two political parties.

Perhaps a more pervasive concern regarding independent expenditures lies in the question of just how independent these efforts actually are from the official campaign organization of particular candidates. Although the law prohibits coordination or consultation per se, observers have voiced skepticism both in specific instances and in general about the degree to which these efforts are truly independent, in view of the widespread dissemination of information about campaign strategies through the media. The fact that most independent expenditures are conducted by large PACs with highly professional staffs and often overlappying contacts within the established political community adds to the skepticism that there is not at least a tacit level of coordination between the campaigns of the candidates and of outside groups seeking to help those candidates.

The Boren proposal includes several provisions to regulate and to curb independent expenditures, important features of a bill which might otherwise encourage such activity by its restrictions on direct contributions by PACs. Three approaches are engendered in the bill: promoting greater public awareness of independent expenditures, closing loopholes by precisely defining the term "cooperation or consultation," and requiring free response time for candidates opposed by independent expenditure advertisements.

*Public awareness*

This provision would require the following disclaimer to be included in all independent expenditure advertisements by PACs:

"This message has been authorized and paid for by (name of committee/or any affiliated organization of the committee), (name/title of treasurer and/or president). Its cost of presentation is not subject to any campaign contribution limits."

Current law—in 2 U.S.C. 441d(a)(3)—requires that all communications in support of or opposition to candidates that are made without the authorization of a candidate must clearly identify who is paying for the communication and must state that it is not authorized by any candidate or candidate's committee. Thus, the current law recognizes the public's right to know who is behind political messages and attempts to help the public understand the distinction between a political message by a candidate and one by persons outside the official campaign structure.

Although this provision would require a somewhat fuller identification of who is paying for an independent expenditure, its major thrust is to provide an additional reminder to the public that the communication is outside the framework of the candidate versus candidate contest. It is not clear, however, whether the required notice that the costs are not subject to contribution limits adequately conveys the intended underlying message. It is even less clear that any but the most politically informed and sophisticated voters would understand the context of independent expenditures and the current campaign finance laws. Supporters of the Boren provision might argue that anything which alerts voters that the political message is different from those they are accustomed to seeing is beneficial, but the question remains whether the current law adequately addresses this issue or whether additional notices are needed.

*Closing loopholes*

This provision adds to the legal definition of "independent expenditure" a more precise explanation of the key term, "cooperation or consultation with any candidate." Specifically, it states that cooperation or consultation has occurred when the person or any officer, director or employee of the person making the independent expenditure "communicates with, advises, or counsels the candidate at any time on the candidate's plans, projects, or needs relating to the candidate's pursuit of nomination for election, or election, to Federal office, in the same election cycle, including any advice relating to the candidate's decision to seek Federal office." Furthermore, cooperation or consultation will have occurred when the independent spender retains the professional services of someone who, within the same two-year election cycle, provides those services to the candidate.

By including these specific situations in the definition of "cooperation or consultation with the candidate," this provision, in effect, prohibits them from occurring, lest the communication be deemed a contribution—subject to limits—and not an independent expenditure. It thus addresses some of the alleged abuses of the independent expenditure option in recent years, wherein individuals associated with a candidate in some way may have also had some involvement with those making independent expenditures in that election, if not concurrently, then sequentially. Not only are specific types of contact ruled out, but the provision places a time limit on the prohibited contact when it involves the services of vendors (i.e., within that election cycle).

To many critics of the present law, the need for a clearer definition of independent expenditures has been apparent for some time, in order to distinguish between legitimate, constitutionally protected efforts and those which either violate the spirit of the law or exploit the ambiguities or vagueries of current statute. By elaborating on what is meant by cooperation and consultation and by extending coverage to employees and shared vendors of services, this provision could prove helpful in protecting the spirit of the campaign finance laws and defusing some of the controversy surrounding independent expenditures. Critics may charge, however, that the language of this provision is overly broad and that it is so restrictive as to have a chilling effect on First Amendment rights, by outlawing forms of contact which are not at all intended to undermine the Federal election laws.

### *Free response time*

This provision is at the heart of the independent expenditures section of the Boren proposal. It seeks to curb independent expenditures by providing disincentives to their use. Specifically, it states:

"If any licensee permits a person to utilize a broadcasting station to broadcast material which either endorses a legally qualified candidate for any Federal elective office or opposes a legally qualified candidate for that office, such licensee shall, within a reasonable period of time, provide to any legally qualified candidate opposing the candidate endorsed (or to an authorized committee of such legally qualified candidate), or to any legally qualified candidate who was so opposed (or to an authorized committee of such legally qualified candidate), the opportunity to utilize, without charge, the same amount of time on such broadcasting station, during the same period of the day, as was utilized by such person."

The word "person" is defined to include an individual, partnership, committee, association, corporation or any other organization or group of persons, but is not intended to mean a legally qualified candidate for Federal office or his or her authorized committee. Hence, the free response time is only to be triggered by communications made by those not connected with a candidate (i.e., an independent expenditure effort).

This provision is identical to one included in a bill (S. 1310) offered by Senators Danforth and Hollings in the 99th Congress, which was the subject of two days of hearings in 1985 by the Senate Committee on Commerce, Science, and Transportation. That bill, in part because of another of its major provisions, became identified in popular terms as the "anti-negative campaigning bill." It is important to note that this particular provision is aimed not at negative advertisements per se but all independent expenditure broadcasts, whether in support of or opposition to a candidate. And the broad issue of independent expenditures should by no means be overly identified with the question of negative advertisements, despite the considerable publicity generated by some negative independent efforts by the National Conservative Political Action Committee (NCPAC) in 1980 and 1982. While negative advertisements have tended to predominate in congressional elections, the vast majority of independent spending in presidential elections has been positive (in support of a candidate); in the 1984 elections, 56 percent of independent expenditures even in congressional races were made in support of various candidates.[24]

Supporters of the free response provision argue that it would help restore some balance and fairness in a campaign in which a candidate may be overwhelmed by the financial resources not only of an opponent but of affluent, outside groups, as well. Furthermore, it would address a major problem with independent expenditures, the lack of accountability of those who engage in them. Whereas voters may register disapproval with a candidate's campaign by voting against him, independent groups are unaffected by such methods; charges made by independent spending forces—which may have as much impact on an election as those by a candidate—will most likely have to be responded to by the candidate attacked, at his own expense.

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[24] U.S. Federal Election Commission. FEC Reports 1983-84 Independent Spending Activity (press release): Oct. 4, 1985.

The major consequence of this provision, if enacted, may be a great unwillingness on the part of broadcasters to accept advertisements by independent expenditure groups. Unlike the Federal law which requires broadcasters to sell time to qualified candidates for public office, there is no such requirement regarding political communications by outside groups; it is left to the discretion of the broadcaster whether to sell time for such advertisements or not, and there have been numerous instances in which broadcasters have refused such advertisements. Faced with the certainty of triggering the provision of free response time for one or more opponents, broadcasters will likely be reluctant to accept any independent advertisements in the first place. As a disincentive to independent expenditures, this measure will likely prove to be quite effective. A major goal of supporters would thus be realized, of particular importance in the context of a bill which would curb direct PAC giving to candidates and otherwise provide some encouragement toward this form of political spending. (It should be noted that a broadcaster might respond to this provision by charging higher rates—perhaps double—to independent spenders, thus shifting the financial burden that would be incurred to the independent spender. Even considering such a possibility, wherein the advertisement would be broadcast, the provision would still have to be viewed as a considerable deterrent to the independent spender, given the much higher cost and the knowledge that his message would trigger response time to the opponent at no cost to the latter.)

The very effectiveness of the deterrent to independent expenditures is the root of a fundamental objection to the proposal. One can argue that, by effectively preventing these advertisements, this measure will result in suppression of dissent. To the extent that independent expenditures constitute a vehicle for dissenting viewpoints, there is some truth in this argument. Critics of this measure also charge that it would protect incumbents, who are most often the targets of independent expenditures (perhaps because they have a record to defend). The opposition insists that independent advertisements serve to promote vigorous dialogue and any effort to curb this practice would have a stifling effect on the political system.

The arguments against free response time are not limited to the philosophical objections in the preceding paragraph. The question of constitutionality has been raised, although this contested point will not be discussed here. Of a more practical nature, some of the following reservations might be noted: (1) the provision does not affect newspaper, telephone, or mail communications, all of which are potentially effective vehicles for reaching voters (although, some would argue, none as effective as TV); (2) response time to an advertisement endorsing a candidate could force broadcasters to offer free time to minor party and fringe candidates; (3) a group wishing to undermine the measure might run an advertisement ostensibly endorsing a candidate and listing unpopular stands on issues he or she had taken, thus alienating some voters from the candidate and also triggering response time for the candidate really favored by the group; and (4) the language of the provision may be overly broad and may apply to news and public affairs programming as well as paid advertisements, thus preventing well-known noncandidates from endorsing or opposing candidates on news interview shows.

## CONCLUSION

This report has offered an analysis of the Boren proposal, a major focal point of efforts to change the campaign finance system in 99th Congress. Throughout this report, two principal schools of thought have emerged on the subject of campaign finance reform. One side takes the view that there is a serious problem with the way campaigns are financed and that the root of the problem lies in the overly important role played by special interests (through their PACs); that side's solution is in proposals such as this one which seek to curb directly the role of PACs in the financing of campaigns. The other side is inclined toward the view that there is no serious problem with the financing process, that PACs need not be curbed, that independent expenditures are not inherently harmful, that there are PACs on differing sides of an issue or candidate, and that all that is needed to prevent corruption is full disclosure of financial activity; this side opposes outright the Boren proposal and similar efforts.

It should be noted that there are at least three other major schools of thought on the subject of campaign financing in the 99th Congress. They all begin with the premise that the system is not working properly, and each offers a fundamentally different approach in dealing with it. One camp asserts that the root of the current problems is the declining role of small individual donations, and it supports a 100 percent tax credit for donations in amounts of $100 or less from in-State residents; this is included in the Tax Reform Act of 1985 (H.R. 3838), passed by the House and awaiting action by the Senate. A second camp insists that any perceived problems with the current system can be traced to the legal restraints on the political parties' role in the campaign financing process, the parties being seen as mediating agents for interest group pressure; this side has rallied around S. 1891 (Senator Heinz) and H.R. 3863 (Representative Frenzel) which greatly increase or remove various limits affecting party contributions and expenditures. Finally, there is a faction which believes that the real problem is not so much the source of campaign money (although they are troubled by that, as well) as it is the excessive costs of campaigns and the burdens that places on the candidates and the system; in this view, engendered notably in S. 1787 (Senators Mathias and Simon), nothing short of public financing of congressional elections with limits on campaign expenditures will alleviate the problems in the long run.

It is in the context of these other major schools of thought on campaign financing that the Boren proposal is offered. It has emerged nonetheless as perhaps the major focus of campaign reform efforts in the 99th Congress.

# APPENDIX 12

## Response by Common Cause to Questions Submitted by Senator Mathias

*Question 1.* One of the major concerns you and many others have expressed is in respect to the impact of PAC contributions on congressional decisionmaking. On page 5 of your statement you show the volume of contributions by PACs from a variety of industries to members of the Senate Finance Committee as a whole. The volume might be changed but would it not be possible—if the Boren bill became law—for the same industries to make a similar pattern of contributions? If that would not be possible, what provision of the Boren bill would prevent it?

Answer 1. The purpose of the Boren-Goldwater proposal is to reduce the overall amount of money which candidates may accept from all political action committees combined—and thereby to dilute the present impact of PAC contributions on the political process. Had the Boren-Goldwater bill been law in the last election cycle, for example, it would have cut PAC contributions to Senate candidates roughly in half, from $28 million to $14 million.

Under these circumstances, the overall sums of money contributed by groups of PACs representing similar interests is going to be substantially smaller than is the case under current law, which imposes no overall limit on PAC contributions. With smaller total sums of money involved, the aggregate impact of contributions from PACs representing similar interests would be diminished.

It must also be emphasized that unless action is taken now to establish limits on PAC giving, the floodtide of PAC money in Congress will only continue to increase exponentially in the future. Stopping this growth by enacting an overall cap on PAC contributions will also sharply limit the ability of PACs representing similar interests to dramatically enhance their aggregate impact in the years ahead.

*Question 2.* In connection with your concerns about "soft money", would you discuss the kinds of activities and expenditures which state political parties can engage in without affecting federal elections? Where can a feasible and realistic line be drawn to separate those expenditures and activities on behalf of state and local candidates which should come under the limits and the constraints of the FECA because they in fact have or will have an impact on federal elections?

Answer 2. The net impact of "soft money" practices is that campaign funds that are prohibited for federal campaigns are being raised and spent for purposes of influencing federal elections. These activities are undermining the federal campaign finance law's individual and political committee contribution limits, the limits on political party activity, the ban on corporate and union contributions and the presidential public financing provisions.

Soft money practices are not only undermining our laws, they are also illegal. The federal laws do not allow funds prohibited for federal elections to be channeled to state political parties for the purpose of influencing federal elections. A 1979 amendment to the Federal Election Campaign Act (FECA) for example, provides for unlimited voter registration and get-out-the-vote expenditures by state and local parties on behalf of their Presidential and Vice Presidential nominees. This provision flatly prohibits, however, the use of any funds for these expenditures that are not in compliance with federal contribution limits and prohibitions.

In 1976 the FEC flatly proscribed the use of corporate or union treasury funds to fund a portion of a registration or get-out-the-vote drive conducted by a state or local party. In 1978 the FEC reversed itself and authorized the allocation of expenditures by corporations and labor unions for registration and get-out-the-vote drives between federal and "non-federal" elections. In so doing, it opened the door to intentional efforts to channel these funds through state parties for the purpose of influenceing federal elections. The "soft money" problems stem from this 1978 FEC decision.

We believe that there is no basis in the statute for the artificial allocation process which has been created by the FEC for these state and local party expenditures, the net result of which is to allow corporate funds and labor union dues and large individual contributions to be channeled to state parties and spent by them with the intent of influencing the presidential elections.

Our approach to stopping this undermining of critical provisions of the federal campaign laws is based on the view that the FEC's incorrect decision of 1978 should be reversed and the correct 1976 decision restored. We believe that national-level party committees and federal campaigns should not be allowed to accept any funds prohibited for use in federal campaigns or to channel them to state parties, that state parties should not be allowed to make party-building expenditures (including voter registration, get-out-the-vote and general media advertising campaigns) in federal election years with any funds proscribed by federal law, and that appropriate disclosure should be required by state and local parties to be able to effectively implement these provisions. (The attached Common Cause submission to the FEC provides a more detailed explanation of this proposal.)

*Question 3.* I am interested in your comments on delegate committee spending and your recommendation that contributions and expenditure limits be applied to national political party convention delegates.

Would this, in your opinion, increase the costs of presidential campaigns and would it lengthen the presidential primary process?

Answer 3. We believe it is necessary for the Congress to clarify that delegate committee activities on behalf or individual presidential candidates must not take place outside of contribution and spending limits that apply to such candidates.

Presidential candidates may receive federal matching funds during the nominating process in return for a commitment to limit their overall and state-by-state campaign spending. Delegate committee expenditures—particularly if the expenditures are made at the direction of, with the encouragement of, or in conjunction with a candidate's campaign—create the capacity to bypass the spending limits to which the candidate and his or her campaign agreed to order to become eligible for federal funds.

Similarly, delegate committees create the capacity for individuals and political action committees to bypass the $1,000 and $5,000 limits to a presidential candidate, respectively, by making multiple contributions to numerous delegate committees—all of which are directly intended to benefit that candidate's campaign. Such contributions serve to undermine the effectiveness of existing contribution limits.

Clarifying delegate committee practices so that candidates may not bypass both spending and contributions limits will not increase the overall costs to campaigns. Delegate committee expenditures are already part of the presidential nominating process—but these activities have not been included as part of the presidential campaign financing system. These are not "new" or "earlier" expenditures—they are expenditures directly related to the nomination of a presidential candidate and thus should be included as part of the process.

Finally, we do not believe that a clarification of delegate committee activities will have any bearing on the length of presidential campaigns.

*Question 4.* Some of the recommendations you make certainly show how difficult it is to contain and maintain campaign finance contributions limits. On what basis do you think the Congress could enact legislation that would prohibit the formation of a PAC by the President, the Vice President or Members of Congress of candidates for those offices?

Answer. 94. The growing practice of establishing PACs by Members of Congress and other candidates for federal elective office poses a number of troublesome issues. First, it raises the specter of Members of Congress using campaign contributions to advance their own personal institutional goals and policy views. Secondly, it has become a device for evading presidential campaign contribution and spending limits by potential presidential candidates. Finally, it has served to undermine significantly existing contribution limits for both PACs and individuals.

Current law limits PACs to contributing $5,000 per candidate per election. Individuals are limited to contributions of $1,000 per candidate per election. However, both PACs and individuals presently are able to channel funds in excess of these amounts to a candidate—by making contributions to a PAC which is controlled by that candidate.

We believe that federal election laws should be amended to provide that no federal official or candidate for federal office may establish, maintain, or control a political committee which makes contributions to or expenditures in behalf of other federal candidates. Such a requirement would eliminate Member PACs and is necessary to protect the integrity of existing contribution limits under the FECA.

*Question 5.* Would you discuss the need, if any, to amend the Boren bill to place the responsibility on the candidate committee rather than the multi-candidate committee for staying within the aggregate limit? The bill seems to place the responsibility on the multi-candidate committee but it would appear that the candidate committee is in a better position to know whether it has reached the aggregate limit.

Answer 5. The responsibility for staying within the aggregate PAC contribution limits imposed by the Boren-Goldwater legislation should be and is shared between the PAC making the contribution and the candidate or candidate committee accepting the contribution. The Boren-Goldwater legislation would amend the Federal Elections Campaign Act (FECA) to prohibit a political committee from making a political contribution in excess of an aggregate limit on contributions from all PACs.

Section 441(f) of FECA, which would not be amended by the Boren-Goldwater bill, would apply the same restriction to a candidate and his political committees receiving such a contribution. It provides that:

"No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of this section. No officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or knowingly make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this section."

This section clearly places a legal responsibility on the candidate and his political committee with respect to the aggregate contribution limits which would be established under the Boren amendment.

*Question 6.* Would you discuss whether the bill would be improved by an amendment allowing for the ceiling on the aggregate PAC limit to be lifted under certain circumstances . . . for example if a candidate's wealthy opponent spent in excess of $2 million of his own personal funds, should the aggregate PAC limit be lifted?

Answer 6. We do not think the bill would be improved by amending it to permit the aggregate PAC contribution limit to be lifted in cases where a candidate's wealthy opponent spends substantial sums out of his or her own pocket. The purpose of the Boren-Goldwater amendment is to limit the potential for corruption or the appearance of corruption by placing an aggregate limit on PAC contributions. Lifting the aggregate limit in cases where a candidate faces a wealthy opponent would undermine this basic purpose.

Common Cause is deeply concerned about the advantage wealthy candidates enjoy under the current campaign finance system. Unfortunately, that advantage will always be there unless the Congress enacts a system of voluntary spending limits tied to public financing of congressional campaigns. As a result of the Supreme Court's decision in the *Buckley* case, the use of personal wealth in a campaign cannot be limited except under a system of public financing. The Court made clear that the use of personal wealth can constitutionally be limited if it is tied to a system of voluntary public financing, in which the candidate agrees to abide by certain limits in exchange for public funds to finance his or her campaign. Under such a system, if the candidate doesn't participate, additional resources could be provided to the opponent, so the opponent can compete effectively.

# APPENDIX 13A

## Materials Submitted by Common Cause

This packet includes over 100 editorials from around the country in support of the PAC limit amendment introduced by Senators David Boren and Barry Goldwater in the Senate and Represenatives Mike Synar and Jim Leach in the House.

The newspapers, listed in alphabetical order by city, are:
Albuquerque Journal; Albuquerque, New Mexico
Anchorage Daily News; Anchorage, Alaska
The Asheville Citizen; Asheville, North Carolina
The Press; Atlantic City, New Jersey (2)
Examiner-Enterprise; Bartlesville, Oklahoma
Beaver County Daily Times; Beaver, Pennsylvania (2)
The Globe-Times; Bethlehem, Pennsylvania
Bluefield Daily Telegraph; Bluefield, West Virginia (2)
Idaho Statesman; Boise, Idaho
The Boston Globe; Boston, Massachusetts
The Christian Science Monitor; Boston, Massachusetts
Daily Camera; Boulder, Colorado (2)
The Bradenton Herald; Bradenton, Florida
Brattleboro Reformer; Brattleboro, Vermont
The Brazil Times; Brazil, Indiana
The Sun; Bremerton, Washington
The Brookings Daily Register; Brookings, South Dakota
Carthage Press; Carthage, Missouri
The Chandler Arizonan; Chandler, Arizona
The Chattanooga Times; Chattanooga, Tennessee
The Sampson Independent; Clinton, North Carolina
Columbia Missourian; Columbia, Missouri
The Columbia Record; Columbia, South Carolina
Covington Virginian; Covington, Virginia
Dallas Times Herald; Dallas, Texas (2)
Quad-City Times; Davenport, Iowa
Journal; Daytona Beach, Florida (3)
Rocky Mountain News; Denver, Colorado
Elmira Star-Gazette; Elmira, New York
Enid Morning News; Enid, Oklahoma (2)
Erie Daily Times; Erie, Pennsylvania
Fort Myers News-Press; Fort Myers, Florida
The News-Herald; Franklin, Pennsylvania
Gainesville Sun; Gainesville, Florida (2)
Post-Tribune; Gary, Indiana (2)
The Grand Rapids Press; Grand Rapids, Michigan
Greeley Daily Tribune and Republican; Greeley, Colorado
Greenfield Recorder; Greenfield, Massachusetts
Greensboro News & Record; Greensboro, North Carolina
The Times; Hammond, Indiana
Sunday Patriot News; Harrisburg, Pennsylvania
The Hartford Courant; Hartford, Connecticut (2)
Transcript-Telegram; Holyoke, Massachusetts
The Honolulu Advertiser; Honolulu, Hawaii
The Houston Post; Houston, Texas
The Herald-Dispatch; Huntington, West Virginia
The Post-Register; Idaho Falls, Idaho
The Clarion-Ledger; Jackson, Mississippi
The Janesville Gazette; Janesville, Wisconsin
The Joplin Globe; Joplin, Missouri
Kansas City Times; Kansas City, Missouri (4)

The Keene Sentinel; Keene, New Hampshire
The Ledger; Lakeland, Florida (2)
Lansing State Journal; Lansing, Michigan
Leesburg Commercial; Leesburg, Florida
Lenoir News-Topic; Lenoir, North Carolina
Bucks County Courier-Times; Levittown, Pennsylvania (2)
The Dispatch; Lexington, North Carolina
The Lincoln Star; Lincoln, Nebraska
Arkansas Gazette; Little Rock, Arkansas (2)
Newsday; Long Island, New York
The News & Daily Advance; Lynchburg, Virginia
The Capital Times; Madison, Wisconsin
Wisconsin State Journal; Madison, Wisconsin (2)
Medford Daily Mercury; Medford, Massachusetts
Melrose Evening News; Melrose, Massachusetts
Mesa Tribune; Mesa, Arizona
The Modesto Bee; Modesto, California
Dominion-Post; Morgantown, West Virginia
The Tennessean; Nashville, Tennessee
The Herald; New Britain, Connecticut
The Day; New London, Connecticut
The New York Times; New York, New York (2)
The Advocate; Newark, Ohio
The Virginian-Pilot; Norfolk, Virginia
The Norman Transcript; Norman, Oklahoma
Norwich Bulletin; Norwich, Connecticut
Ocala Star-Banner; Ocala, Florida (2)
The Daily News of Johnson County; Olathe, Kansas
The Orlando Sentinel; Orlando, Florida
Tri-City Herald; Pasco, Washington
The Berkshire Eagle; Pittsfield, Massachusetts
Times Herald; Port Huron, Michigan
The Portsmouth Herald; Portsmouth, New Hampshire
The Reidsville Review; Reidsville, North Carolina
Times-Union; Rochester, New York
The Sacramento Bee; Sacramento, California
St. Louis Post-Dispatch; St. Louis, Missouri (3)
St. Petersburg Times; St. Petersburg, Florida (3)
The Salina Journal; Salina, Kansas
Express-News; San Antonio, Texas
San Antonio Light; San Antonio, Texas
Sarasota Herald Tribune; Sarasota, Florida
Scottsdale Daily Progress; Scottsdale, Arizona
Tribune; Scranton, Pennsylvania
Seattle Post-Intelligencer; Seattle, Washington
Argus Leader; Sioux Falls, South Dakota
News-Sun; Sun City, Arizona (2)
The Post-Standard; Syracuse, New York
Syracuse Herald-Journal; Syracuse, New York
Tallahassee Democrat; Tallahassee, Florida (2)
News; Tempe, Arizona
Topeka Capital-Journal; Topeka, Kansas
Register Citizen; Torrington, Connecticut (2)
Trenton Times; Trenton, New Jersey
The Northeast Mississippi Daily Journal; Tupelo, Mississippi
Waco Tribune-Herald; Waco, Texas
Watertown Public Opinion; Watertown, South Dakota
Watertown Daily Times; Watertown, Wisconsin
Daily Local News; West Chester, Pennsylvania
The Palm Beach Post; West Palm Beach, Florida
Wheeling News-Register; Wheeling, West Virginia
Wichita Falls Record News; Wichita Falls, Texas
The Burlington County Times; Willingboro, New Jersey
York Daily Record; York, Pennsylvania
The York Dispatch; York, Pennsylvania (2)
Vindicator; Youngstown, Ohio
(Copies of the editorials are on file with the Committee.)

# APPENDIX 13B

[Before the Federal Election Commission]

## THIRD SUBMISSION OF COMMON CAUSE CONCERNING THE NEED FOR A RULEMAKING REGARDING "SOFT MONEY"

### I. INTRODUCTION

Common Cause submits these comments in response to the Commission's December 18, 1985 Notice of Inquiry. The Commission published that Notice thirteen months after Common Cause first urged the Commission promptly "to make the 'soft money' problem a top priority in carrying out its statutory responsibility to enforce the federal campaign finance laws." [1] The Notice of Inquiry came eleven months after the Commission issued a "Notice of Availability" [2] on the subject, and ten months after Common Cause submitted comprehensive Comments in response to that Notice.[3] Those Comments detailed the publicly available information pertaining to the "soft money" crisis and proposed specific curative regulations for the Commission's consideration.

Common Cause welcomes the Commission's recent Notice of Inquiry. But we must note our surprise that, even at this late date, the Commission is still asking: Is "soft money" a problem? Are sufficient facts available about "soft money" practices? And should the Commission act to curb "soft money" abuses? We therefore urgently reiterate our responses to those broad questions:

1. Yes, "soft money" practices present a very serious problem that threatens the integrity of the electoral process and breeds cynicism and disrespect for the federal election laws.[4] These practices are illegal because they introduce money from prohibited sources into the federal election process. "Soft money" undermines the FECA's individual contribution limits, the ban on corporate and union contributions, the FECA's disclosure provisions, and the Fund Act.[5]

2. Yes, the publicly available facts, as detailed in Common Cause's February 1985 Comments, demonstrate that: (A) "soft money" is a national, not a state or local, fundraising phenomenon; (B) the amounts of nationally raised "soft money" are substantial; and (C) "soft money" is used "in connection with" and "for the purpose of influencing" federal elections.[6] Subsequent to our February 1985 filing, additional information has come to light which confirms these conclusions. These facts are briefly discussed in Part II below. If, in the Commission's judgment, still further facts are necessary to provide a basis for Commission action with respect to "soft money," the Commission has both the responsibility and the power to obtain such data. Accordingly, we urge the Commission expeditiously to supplement the current factual record in this proceeding, if it thinks it necessary, by exercising its statutory authority to require testimony, document production, written reports, and answers to questions.[7]

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[1] Letter to Lee Ann Elliott, Chair, Federal Election Commission, from Fred Wertheimer, President, Common Cause (Nov. 5, 1984); Letter to Charles N. Steele, General Counsel, Federal Election Commission, from Fred Wertheimer, President, Common Cause (Nov. 5, 1984).

[2] Rulemaking Petition: Notice of Availability, 50 Fed. Reg. 477-78 (Jan. 4, 1985).

[3] Comments of Common Cause With Respect to its Petition for Rulemaking Regarding "Soft Money" (Feb. 4, 1985) ("Common Cause Comments"). A copy is attached for the reader's convenience. Four other parties also made submissions. Letter from Ellen S. Miller, Executive Director, Center for Responsive Politics (Feb. 4, 1985); Letter from Robert J. Wager, President, American Bakers Association (Feb. 1, 1985); Letter from Reed Larson, President, National Right To Work Committee (Feb. 1, 1985); Letter from Anthony R. Conte, Councilor, City of Revere, Mass. (Jan. 9, 1985).

[4] See Common Cause Comments at 1-2, 10-28.

[5] See id. at 19-24.

[6] See id. at 10-19.

[7] See 2 U.S.C. § 437d(a)(1)-(4) (1982).

3. And, yes, the Commission should and must act—promptly—to curb "soft money" abuse. As set forth more fully in our February 1985 Comments, a rulemaking is necessary because the Commission's existing regulations are flawed.[8] Although more vigorous enforcement of existing regulations could deal with some reported circumventions of the law—for example, the regulation that requires allocation methods to be "reasonable" [9]—the existing regulations are not adequate. In particular, the regulations on disclusure and allocation of expenses misinterpret the FECA and leave room for substantial abuse and violations of the law.

We stress the need for prompt action, because the 1988 presidential campaign has already begun. "Soft money" practices directed at the 1988 election are no doubt already being planned. The Commission would be derelicit in its duty if it ignored the evidence of such abuses in the 1984 campaign and allowed the next presidential election to be infected by the same—and perhaps far worse—"soft money" practices.

The balance of this submission will be brief, because our February 1985 Comments supplied a great deal of information responsive to the December 1985 Notice. We will first supplement the facts we brought to the Commission's attention in November 1984 and February 1985; then answer the Commision's inquiries concerning the proper scope of this proceeding; and, finally, discuss briefly Common Cause's proposed curative regulations and the Commission's power to adopt them.

## II. SUPPLEMENTARY FACTUAL INFORMATION

Since our February 1985 filing, additional information has come to light that confirms the seriousness of the "soft money" problem and shows that it is spreading to new areas. These developments show that there is no basis whatsoever for concluding either that "soft money" problems are unimportant or that current Commission regulatory approaches provide adequate solutions to those problems.

Recent data confirm that "soft money" is a national phenomenon.[10] According to one commentator, "soft money collected and distributed from Washington has weakened the state parties in favor of the few national party strategists who decide where to direct the torrent of dollars." [11]

Former Reagan campaign manager, Edward J. Rollins observed trenchantly that " 'What has happened is that the national committees have sucked all the money to Washington.' " [12]

Other observers have reached similar conclusions:

" 'The national party used to exist solely for the purpose of selecting the national nominees and was financed by the state parties, but now it provides the money . . . to the states.' " [13]

The practice of establishing "soft money" accounts is spreading from national party committees to federal candidates and officeholders. It is reported that 1988 Republican Presidential contenders Kemp and Bush are considering the establishment of "soft money" accounts.[14] And this Commission recently considered an Advisory Opinon Request from Congressman Fazio, who sought guidance on the establishment of a "soft money" committee.[15]

Second, more and more evidence show that the amounts of "soft money" are substantial. It has been reported that seven labor unions contributed more than $1.5 million into a "soft money" account sponsored by the Democratic National Committee.[16] One Democratic party official announced that the DNC raised a total of $9.4 million within the last year from sources barred from making contributions "in connection with" or "for the purpose of influencing" federal elections.[17]

Third, these contribution patterns and other available information confirm the inescapable inference—detailed in Common Cause's February 1985 Comments—that many "soft money" expenditures are made "in connection with" or "for the purpose of influencing" federal elections. An outstanding recent study by the Center for Responsive Politics lists several apparent examples of such conduct.[18] For example, the study reports that Nebraska state GOP Chairman Kermit Brashear admitted his committee would give the Republican candidate for the U.S. Senate $150—190,000 worth of campaign services, which were effectively financed by a contemporaneous infusion of $186,000 from the RNC and the NRSC.[19] According to Brashear, the RNC/NRSC money could not have been spent directly in the federal senatorial race, but the money freed up the state party's own funds for such use.[20]

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[8] See Common Cause Comments at 24-28.

[9] 11 C.F.R. § 106.1(e).

[10] See Common Cause Comments at 12-13.

[11] Brownstein, "Political Focus," National Journal (Dec. 7, 1985) at 2828.

[12] See id.

[13] Id. (quoting Mahe and Kayden, "The Party Goes On" (Basic Books, 1985)).

[14] Id.

[15] Advisory Opinion Request 1985-38 (November 18, 1985); Draft Advisory Opinion 1985-38 (discussed at Commission meeting, Jan. 9, 1986).

[16] VI PACs & Lobbies No. 3 at 1, 3 (Feb. 6, 1985).

[17] Id. at 2.

[18] Center for Responsive Politics, "Money and Politics: Soft Money—a loophole for the '80s," at 16-17.

As discussed above, the factual record in this proceeding already provides a powerful—indeed, a compelling—basis for the Commission's adoption of regulations to deal with the "soft money" problem, such as those Common Cause has proposed. But if the Commission has any doubt on this score, it has an obligation to exercise its investigatory powers vigorously and promptly to supplement the record.

### III. SCOPE OF THE RULEMAKING

The Commission's Notice of Inquiry points out that some groups have defined "soft money" as funds from prohibited sources; others focus on nonreporting accounts designated for state and local elections. Our February 1985 Comments included both elements in a description of "soft money": "funds received by political party organizations and other political committees, purportedly for use at the state or local level, from sources that would be barred from making contributions in connection with a federal election. These sources include corporations, labor unions, and individuals and political committees in amounts above their federal limits. . . . Although soft money is purportedly used solely in connection with nonfederal elections, in fact it is often deliberately spent 'in connection with' and 'for the purpose of influencing' federal elections."[21]

This description of "soft money" practices is, we believe, broad and comprehensive. It encompasses the practices of political party committees as well as other political committees.

While we believe the problem is best conceptualized in these broad terms, the important objective, in our view, is to strike—and strike quickly—at the most serious current abuses. We believe the record already compiled in this proceeding shows that these abuses are associated with the "soft money" practices of political party committees, federal candidates, and federal officeholders, particularly but not exclusively in connection with presidential elections. For this reason, the regulations Common Cause proposed for Commission consideration in its February 1985 Comments are largely directed toward these problems. We urge the Commission to assure expedited action in these key areas.

The Commission's Notice of Inquiry discusses other areas, including, for example, activity by delegates to presidential conventions and corporate and union spending on campaign-related matters. While these issues may well require Commission consideration, we think that their inclusion in the "soft money" rulemaking would unnecessarily stretch it beyond appropriate and manageable limits.

### IV. COMMON CAUSE'S PROPOSED REGULATIONS

The Notice of Inquiry discusses three areas of concern regarding political party committees: (1) "exempt activities" by state and local parties; (2) use of funds from "nonfederal" accounts to assist federal candidates; and (3) "party-building" activities. Common Cause's February 1985 Comments proposed regulations to deal with "soft money" abuses in each of these areas. We summarize these proposals in order.

#### *1. "Exempt activities"*

The FECA provides special treatment for these types of "exempt activities" by state and local party committees: (a) slate cards, sample ballots, and candidate lists; (b) materials used in volunteer activities, i.e., buttons, bumper stickers, and yard signs; and (c) voter registration and get-out-the-vote drives for the national ticket. Payments by state and local committees for these activities need not be counted as "contributions" and "expenditures." Congress specifically stated, however, that these payments could be made only from sources that could lawfully make contributions in connection with federal elections.[22]

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[19] Id.

[20] Id. at 17 & n. 28.

[21] Common Cause Comments at 2.

[22] 2 U.S.C. §§ 431(8)(B)(x)(2); 431(8)(B)(xii)(2); 431(9)(B)(viii)(2); 431(9)(B)(ix)(2).

The Commission's current regulations permit state and local party committees to allocate payments for all three types of activity between federal and nonfederal accounts,[23] even though the legislative history contemplated allocation only for material used in volunteer activities (category (b)).[24] The regulations require only the federal portion of such expenses to be paid from permissible funds, implicitly allowing the "nonfederal" part to be paid for with money from federally-forbidden sources.

Common Cause proposed to forbid federal, state, and local party committees to allocate any voter registration and get-out-the-vote costs to nonfederal accounts during a year in which any federal election is being held in the relevant geographical area.[25] We pointed out that the Commission had taken this position itself in 1976 before making an unexplained about-face in 1978. In our view, the Commission should return to its 1976 position. It defies common sense to say that voter registration and get-out-the-vote are not done "in connection with" federal elections when they occur during a federal election year.

### *2. Misuse of funds from "nonfederal accounts"*

In a separate section, the Notice discusses the use of unreported funds from "nonfederal accounts" to assist federal candidates. Common Cause asserted in February 1985 that "a serious problem does exist and the reported statements, even if exaggerated, go far to create the appearance that the election laws are being evaded to a substantial degree."[26] Our proposed regulations provided different treatment for national-level party committees and for all other committees. We proposed that national-level party committees, including congressional campaign committees, should not be permitted to establish "nonfederal" accounts or to channel "soft money" to state and local parties. Any money received or channeled by such committees (except for purposes exempted in express statutory language, such as headquarters buildings) would be subject to the limitations, prohibitions, and reporting requirements of FECA. We also proposed that state and local parties and other registered political committees should be required to report all receipts from sources that are barred from giving money to be used "in connection with" federal elections.[27]

### *3. "Party-building" Activities*

The Commission's Notice lumps together two separate issues in its discussion of "party-building" activities. The first is the role of national parties (and federal officeholders) in helping state and local parties obtain "soft money," ostensibly to be used for "party-building activities." The second is the allocation of party-building costs between the federal and nonfederal accounts of party committees.

On the first issue, we described two methods: national-level committees transferred funds to state or local parties from their own "nonfederal accounts," and national committees or federal officeholders advised contributors on which state and local parties should receive funds. Common Cause proposed a regulation making it unlawful for national-level party committees, federal candidates, and federal officeholders to have "nonfederal accounts,"[28] except as authorized specifically by the statute. We also proposed that funds provided to state or local parties with the help of national parties or federal officeholders, either by direct transfers or by channeling, should be deemed "contributions," which are subject to FECA and thus may not come from prohibited sources.[29]

On the second issue, allocation of party-building costs, we proposed regulations to deal with the areas of greatest potential abuse. First, we defined as "expenditures" all payments by national-level party committees, including congressional campaign committees, except statutorily exempted categories. All such payments would be subject to the FECA's prohibitions. Second, our proposed regulations required state and local parties to use only federally permissible funds during federal election years for voter registration and get-out-the-vote expenditures, as well as for generic media advertising about the party. We urged that, in light of the circumstances, all of these activities were done in connection with federal elections; thay must therefore be paid for exclusively with funds from permissible sources.[30]

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[23] Common Cause Comments at 25–27.

[24] That legislative history is, moreover, inconsistent with the plain language of the statute as enacted. Id. at 26 n.64.

[25] See id. at 43–48.

[26] Id. at 11.

[27] There is precedent for partial reporting in the statute. Section § 434(c) requires persons other than political committees to report certain specified information about independent expenditures.

[28] Common Cause Comments at 40–41. Under the proposed regulation, all gifts to these persons and committees would be "contributions," except those specifically exempted by the FECA.

[29] See id. at 37–41.

Under the regulations proposed by Common Cause, state and local party committees would be permitted to allocate certain expenditures between federal and nonfederal accounts. For example, these committees could allocate payments for grassroots volunteer materials in all years and for generic advertising and voter registration in years without federal elections. Common Cause proposed a regulation that would require these party committees to allocate a minimum of 50 percent of such costs to their federal account, because of the relative importance of federal candidates.[31] In addition to these specific proposals, Common Cause believes that the Commission should specify a limited number of tightly-drafted allocation methods in its regulations, and that it should require political committees to disclose and justify allocations of spending between federal and nonfederal accounts.

### V. THE COMMISSION'S AUTHORITY TO ACT

The regulations Common Cause proposed in its Comments are within the Commission's jurisdiction to enforce the campaign finance laws and to prevent evasion of the law. The FECA gives the Commission broad authority "to make, amend, and repeal such rules, pursuant to the provisions of [the Administrative Procedure Act], *as are necessary to carry out the provisions* of this Act and [the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act.]" 2 U.S.C. § 437d(a)(8) (emphasis added).[32]

These broad rulemaking provisions give the Commission the authority to adopt any regulation that is "reasonably related to the purposes of the enabling legislation under which it was promulgated." *Thorpe* v. *Housing Authority,* 393 U.S. 268, 280–81 (1969); *see United States* v. *Southwestern Cable Co.,* 392 U.S. 157, 173–78 (1968).[33] Thus, the Commission may adopt regulations that are necessary to enforce the statute as to elections for federal office, even if they have some incidental effect on nonfederal activity. In *American Trucking Ass'ns* v. *United States,* 344 U.S. 298, 311 (1953), the Court rejected the contention that any agency lacked power to regulate practices not listed in the statute, noting that "the rules in question are aimed at conditions that may directly frustrate the success of the regulation undertaken by Congress. . . . It is an unnatural construction of the Act which would require the Commission to sit idly by and wink at practices that lead to violations of its provisions."

Agency regulations may "requir[e] some individuals to submit to regulation who do not participate in the conduct the legislation was intended to deter or control," because regulations may include "a reasonable margin to insure effective enforcement." *Mourning* v. *Family Publications Service, Inc.,* 411 U.S. 356, 374 (1973).[34]

As demonstrated in detail in Common Cause's February 1985 Comments, the Commission has authority to regulate nonfederal accounts because many so-called "nonfederal" accounts are in fact being used improperly to influence federal elections. The Commission also has the authority to regulate "party-building activities" because expenditures for this purpose benefit federal as well as state and local candidates. As long as the regulations are within the Commission's jurisdiction under the Act, 2 U.S.C. § 453 specifically provides that they "supersede and preempt" any otherwise applicable provision of state law. Federal law provides the exclusive standard for activities that have an impact on federal elections.

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[30] These payments would not count against the party committee's contribution limits for particular candidates unless the requisite coordination were found. See id. at 47–48.

[31] See id. at 46, 48.

[32] See *FEC* v. *Democratic Senatorial Campaign Comm.,* 454 U.S. 27, 37 (1981) (Commission's primary and substantial responsibilitty for administering FECA); *Buckley* v. *Valeo,* 424 U.S. 1, 109 (1976).

[33] See, e.g., 50 Fed. Reg. 9992, 9994 (1985) (funds received for "testing the waters" are not contributions or expenditures but may not come from prohibited sources; "[t]he Commission views the amended regulations as reducing the potential for circumvention of the prohibitions and limitations of the Act.").

[34] "Where, as here, the transactions or conduct which Congress seeks to administer occur in myriad and changing forms, a requirement that a line be drawn which insures that not one blameless individual will be subject to the provisions of an act would unreasonably encumber effective administration and permit many clear violators to escape regulation entirely." 411 U.S. at 374.

## CONCLUSION

For the reasons stated herein and in our November 1984 and February 1985 submissions, the Commission should promptly promulgate the regulations Common Cause has proposed to curb current "soft money" abuses.

# APPENDIX 13C

[Before the Federal Election Commission]

## COMMENTS OF COMMON CAUSE WITH RESPECT TO ITS PETITION FOR RULEMAKING REGARDING "SOFT MONEY"

Common Cause submits these comments in support of its petition for rulemaking regarding the receipt and use of "soft money" by political party committees.[1]

### I. INTRODUCTION

Congress enacted the Federal Election Campaign Act ("FECA")[2] and the Presidential Election Campaign Fund Act ("Fund Act")[3] to eradicate actual and apparent corruption from federal elections.[4] Congress did not intend to gut the FECA and the Fund Act when it passed minor amendments to the FECA in 1979 that were intended to stimulate state and local party grass-roots activities.[5] Nonetheless, both major parties have exploited loopholes purportedly created by the 1979 FECA Amendments by engaging in extensive "soft money" practices that attempt to roll back the clock to the pre-FECA campaign morass.

The term "soft money" refers to funds received by political party organizations and other political committees, purportedly for use at the state or local level, from sources that would be barred from making contributions in connection with a federal election. These sources include corporations, labor unions, and individuals and political committees in amounts above their federal limits. Such contributions are not systematically disclosed in all states. Although soft money is purportedly used solely in connection with non-federal elections, in fact it is often deliberately spent "in connection with" and "for the purpose of influencing" federal elections. Thus soft money involves the kind of large, secret contributions Congress sought to eliminate by enacting the FECA and the Fund Act. Soft money threatens the integrity of the federal electoral process and breeds deep cynicism about and disrespect for the federal election laws.

Common Cause urges the Commission to curb these abuses, which violate the FECA, by promptly promulgating rules that will:

(1) Forbid national-level party committees and congressional campaign committees from establishing non-reporting "non-federal" accounts and limit such committees to the receipt and use of funds subject to the limitations, prohibitions, and reporting requirements of the FECA;

(2) Require that state and local party committees and other registered political committees disclose receipts of soft money by their "non-federal" accounts;

(3) Define as "contributions" within the meaning of the FECA (a) donations directly received by national-level party committees and congressional campaign committees, and (b) donations channeled or directed in any way by such committees or by others at the national level to state or local party committees or other registered political committees; and

(4) Define as "expenditures" subject to the source limitations of the FECA (a) all payments made by national-level party committees or congressional campaign committees, (b) all payments made by state or local party committees for voter registration or get-out-the-vote activities in a federal election year, and (c) certain other payments made by state or local party committees for materials that affect elections for federal office.

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[1] Letter to Lee Ann Elliott, Chair, Federal Election Commission, from Fred Wertheimer, President, Common Cause (Nov. 5, 1984); Rulemaking Petition: Notice of Availability, 50 Fed. Reg. 477-78 (Jan. 4, 1985).

[2] 2 U.S.C. §§ 431-55.

[3] 26 U.S.C. §§ 9001-13.

[4] See *Buckley* v. *Valeo*, 424 U.S. 1, 25-28 (1976).

[5] Pub L. No. 96-187, 93 Stat. 1339.

## II. STATUTORY BACKGROUND

### *A. The FECA and the Fund Act*

Congress enacted the FECA in 1974 on the basis of a legislative record that proved that campaign financing abuses threatened the legitimacy of federal elections. Reform was imperative.

Congress rightly concluded in 1974 that large contributions were one of the cardinal flaws in past campaign financing practices. Congress found that, because governmental decisions often vitally affect private interests, large contributions were often made to further these private interests by facilitating access to government officials or influencing public decisions.[6] The record before Congress was replete with specific examples of improper attempts to obtain governmental favor in return for large campaign contributions.[7] Congress responded by limiting individual contributions to $1,000 per candidate per election and $25,000 per year, and by limiting multicandidate committee contributions to $5,000 per candidate per election.[8] And the Supreme Court upheld these limits, recognizing that there is a compelling governmental interest in preventing large contributors from "secur[ing] a political quid pro quo from current and potential office holders." [9]

Congress also rightly concluded that secrecy in campaign contributions and expenditures fosters abuse. Congress found that disclosure of campaign finance activity deters actual and apparent corruption and informs the electorate.[10] Congress therefore included a comprehensive campaign finance disclosure scheme,[11] first enacted in 1971, which the Supreme Court broadly upheld.[12]

Earlier Congresses had seen the evils inherent in corporate and labor union contributions because of the "particular legal and econmic attributes" of these organizations.[13] The Supreme Court recently reiterated that the "overriding concern behind the enactment of statutes such as the Federal Corrupt Practices Act [predecessor of § 441b] was the problem of corruption of elected representatives through the creation of political debts. The importance of the governmental interest in preventing this occurrence has never been doubted."[14]

Furthering this overriding interest, 2 U.S.C. § 441b is a blanket prohibition on direct corporate and labor union involvement in federal election campaigns.[15] Although some state laws permit corporations and labor unions to make contributions to state and local parties for use in state and local elections, federal law provides the exclusive standard for activities that have any impact on federal elections. Congress did not intend to permit corporate and labor union money to affect federal elections under the pretext of state campaign activity.

In the Fund Act, Congress sought to prevent campaign fianace abuses in another way. It offered Presidential candidates in the general election the option of eschewing public finiancing altogether by accepting a large public grant.[16] Congress' clear intent was that the public funds, if taken, would substitute for, not merely supplement, private campaign financing. The grant would thereby free Presidential candidates from the burdens and entanglements of raising private funds and the risk of being beholden of private contributions.[17] The Supreme Court has sustained the Fund Act as well.[18]

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[6] H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. 3 (1974).

[7] The Final Report of the Senate Select Comm. on Presidential Campaign Activities, S. Rep. No. 93-981, 93d Cong., 2d Sess. 497-98, 501-02, 592, 593, 612-14, 616, 645-48, 664, 671, 905, 908-20 (1974); Hearings on S. 372 Before the Subcomm. on Privileges and Elections of the Senate Comm. on Rules and Administration, 93d Cong., 1st Sess. 149 (1973).

[8] 2 U.S.C. §§ 441a(a)(1)(A), 441a(a)(3), 441a(a)(2).

[9] *Buckley* v. *Valeo*, 424 U.S. at 26.

[10] S. Rep. No. 93-689, 93d Cong., 2d Sess. 2 (1974); H.R. Rep. No. 92-564, 92d Cong., 1st Sess. 4 (1971).

[11] 2 U.S.C. § 434.

[12] *Buckley* v. *Valeo*, 424 U.S. at 60-84.

[13] See FEC v. National Right to Work Comm. (NRWC), 459 U.S. 197, 208-209 (1982).

[14] FEC v. NRWC, 459 U.S. at 208, quoting First National Bank of Boston v. Bellotti, 435 U.S. 765, 778 n. 26 (1978).

[15] Because the prohibition in 2 U.S.C. § 441b is so absolute, an express statutory exception was needed in order to permit corporations and labor unions to support nonpartisan voter registrations and get-out-the-vote activities. 2 U.S.C. § 431(9)(B)(ii), H.R. Rep. No. 94-1057, 94th Cong., 2d Sess. 63-64 (1976) (conference report). Congress did not enact such an exectption for any direct partisan political activity by corporations and unions.

[16] 26 U.S.C. §§ 9001-13.

[17] *Buckley* v. *Valeo*, 424 U.S. at 96; *Republican National Comm. (RNC)* v. *FEC*, 487 F. Supp. 280, 282-83 (3-judge court), 616 F.2d 1 (2d Cir.) (en banc), aff'd mem., 445 U.S. 955 (1980).

[18] *Buckley* v. *Valeo*, 424 U.S. at 85-109; see generally RNC v. FEC, 487 F. Supp. 280.

### *B. The 1979 FECA amendments*

In 1979, Congress amended the FECA in several respects to enhance the ability of state and local party committees to participate in federal elections. To this end, Congress amended the definitions of the terms "contribution" and "expenditure" to exclude:

(1) payments by state or local party committees of the costs of certain grass-roots campaign materials (e.g., pins, bumper stickers) used in connection with volunteer activities on behalf of the party's nominees, provided that such payments (a) are not for campaign materials used in connection with the media, (b) "are made from contributions subject to the limitations and prohibitions of this Act," and (C) are not from earmarked contributions;[19] and

(2) payments by a state of local party committee of the costs of voter registrationa and get-out-the-vote activities conducted on behalf of the party's Presidential ticket, provided that such payments (a) are not for materials used in the media, (b) "are made from contributions subject to the limitations and prohibition of the Act," and (c) are not from earmarked contributions.[20]

When Congress passed these amendments, it did not intend to eliminate the contribution limits on individuals or committees, or to authorize the reemergence of large private contributions. Congress did not intend to lift the ban on corporate and labor union contributions, or to encourage national party fundraisers to hustle for such contributions. Congress did not intend to abandon the disclosure requirements, or to encourage massive shifts of secret money. And Congress did not intend to convert the Fund Act into a mere supplement to secret private war chests raised in nationally coordinated campaigns by national party figures.

Indeed, Congress was well aware that the 1979 Amendments could create the potential for evasion of the federal election laws. This prompted Congress to include provisos that payments by state and local parties for grass-roots campaign materials, voter registration and get-out-the-vote activities had to be made from "contributions subject to the limitations and prohibitions of the Act."

Congress thereby reaffirmed the paramount national objective of eliminating actual and apparent corruption in connection with federal elections. The sole aim of the exemption for volunteer materials was simply "to encourage volunteers to work for and with local and State political party organizations." [21] The voter registration and get-out-the-vote exemption was designed solely "to provide State and local party organizations with means to support Presidential and Vice Presidential nominees since they are prohibited from making contributions if the nominees accept general election public financing." [22]

## III. FACTUAL BACKGROUND—SOFT MONEY ABUSES

The 1979 Amendments were designed to stimulate traditional grass-roots political activity by state and local parties by and for themselves. What has emerged instead is a pattern in which both major national party organizations aggressively raise large amounts of money—from suspect sources, in suspect amounts, and in secret—which they then dump into state and local party organizations. The state and local party organizations spend the money—but, as candid observers agree, often to serve predominantly federal purposes. These soft money practices violate the FECA.

While soft money is a large and growing problem, it is difficult to document the nature and extent of the abuses related to soft money, because much of the activity is shrouded in secrecy. This Section cites a number of statements by politicians and fundraisers that have been reported in the press. Common Cause cannot vouch for or verify the accuracy of these reported statements, because soft money receipts and expenditures are not reported to the Commission and are unregulated in many states. But a serious problem does exist and the reported statements, even if exaggerated, go far to create the appearance that the election laws are being evaded to a substantial degree. This appearance is itself debilitating to the immediate and long-term effectiveness of the election laws. Congress, the courts, and this Commission have long recognized that the appearance of corruption in federal elections can be almost as insidious as corruption itself.[23]

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[19] 2 U.S.C. § § 431(8)(B)(x), 431(9)(B)(viii); see also id. § 431(8)(B)(xi) (similar provision for candidates); id. § § 431(8)(B)(v), 431(9)(B)(iv) (excluding certain state and local party expenditures for slate cards and sample ballots from definitions of "contributions" and "expenditures").

[20] Id. §§ 431(8)(B)(xii), 431(9)(B)(ix).

[21] H.R. Rep. No. 96–422, 96th Cong., 1st Sess. 9 (1979).

[22] Id. at 10.

### *A. Soft money is a national, not a State or local, fundraising phenomenon*

The focus of soft money fundraising is national—a far cry from what Congress intended when it passed the 1979 Amendments. Soft money is solicited by national political figures on a coordinated basis, and directed to separate "non-federal" accounts of specified party committees or other registered committees.

For example, directions as to where to spend Republican soft money in 1980 are said to have come from the Reagan campaign's political director and his deputy.[24] As one national-level Republican fundraiser described it, "We picked out the states that needed the money, identified money from major contributors and funneled it into the states." [25] The Democratic National Committee ("DNC") has also established a sophisticated national-level soft money operation.[26]

### *B. The amounts of nationally raised soft money are substantial*

Large sums of money are raised and channeled in this manner to the state or local level by both major parties. The press reports that the RNC and Reagan-Bush campaign raised $10-15 million in soft money in the 1980 campaign.[27] Both parties were planning to exceed these amounts in the 1984 Presidential election.[28] According to one press report, a DNC spokesman asserted that the Democratic party had raised $30 million of soft money in the 1984 campaign and that the Republican party had raised $5 million.[29] Other press reports state that both major parties have raised about $2 million a year for their own "nonfederal" accounts, much of it from corporations or unions.[30]

### *C. Soft money is used in connection with Federal elections*

The explanation that these substantial sums of nationally raised sofe money are used solely for state "party-building" activities is a transparent, cynical fiction. Soft money is, in fact, being used deliberately to assist party candidates in federal elections.[31] One knowledgeable commentator has observed with respect to the supposed federal/state soft money distinction:

> "Their [the national parties'] rationale is that they are using soft money for nonfederal elections—for governorships, state legislatures, and so on. . . . But, obviously, efforts to motivate people to vote for the party ticket at the state level are likely to benefit the candidates for federal office as well. So the distinction is a false one, and the lengths to which the parties go to make distinctions between their soft-money and hard-money expenditures are fairly ludicrous." [32]

The press has reported several candid admissions in this regard. According to Rockie Pennington, the Florida Republican Party's executive director, VIVA '84, a national organization of Hispanics supporting President Reagan's reelection, planned to become a subsidiary of the Florida GOP "so they can use the benefits of the state. . . [which has] no limitation on the size of contributions. We can take a check for $1 million. We can take corporate checks." [33] The purpose was not to boost state candidates or aid state party-building; according to Carlos Perez, chairman of the Florida VIVA chapter, "What is at stake is the reelection of President Reagan." [34]

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[23] *Buckley* v. *Valeo*, 424 U.S. at 27 ("Of almost equal concern as the danger of actual quid pro quo arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions."); *FEC* v. *NRWC*, 459 U.S. at 208.

[24] Drew, "Politics and Money," The New Yorker (Dec. 13, 1982) at 64.

[25] Id.; "Republicans and Democrats Battling To Raise Big Bucks for Voter Drives," National Journal (Sept. 1, 1984) at 1622 ("Republicans and Democrats Battling"); "GOP Group Uses Cash Creatively," Wall St. J. (Sept. 13, 1984) at 58 ("GOP Group"). Similarly, Richard Bond, deputy chairman of the Republican National Committee ("RNC") said: "When we have a state we want to give soft money in, we'll run it down to our lawyer and ask how we put it in." Drew, "Politics and Money," New Yorker (Dec. 6, 1982) at 64.

[26] "GOP Group," *supra*, "GOP Accused of Exceeding Senate Aid Limit," Wash. Post (Sept. 13, 1984), at A5 ("GOP Accused of Exceeding").

[27] See "Loophole Lets Parties Raise Millions From Firms, Unions," Wash. Post (Apr. 17, 1984) at A9 ("Loophole Lets Parties Raise Millions"); "Candidates Find It Easy to Give Spending Curbs the Runaround," Wash. Post (June 3, 1984) at A4 ("Candidates Find It Easy").

[28] "Candidates Find It Easy," *supra;* " 'Soft Money' Will Finance Voter Signup," Wash. Post (Aug. 12, 1984) at A4 (" 'Soft Money' Will Finance"); Republicans and Democrats Battling," *supra*, at 1618.

[29] " 'Soft Money' Givers To the Democrats Named in Reports," Wall St. J. (Jan. 16, 1985) at 58 (" 'Soft Money' Givers").

[30] Loopholes Allow Flood of Campaign Giving by Business, Fat Cats," Wall St. J. (July 5, 1984) at 1 ("Loopholes Allow Flood").

[31] See e.g., "Loophole Lets Parties Raise Millions," supra.

[32] Drew, "Politics and Money" (Dec. 6) at 63; see id. at 64 (for several examples).

[33] "Loophole Lets Parties Raise Millions," supra.

Mitchell Daniels, director of the National Republican Senatorial Committee ("NRSC"), described his group's soft money strategy as keyed directly to federal elections.[35] Explaining why all of the nearly $1 million in soft money the NRSC transferred to state parties went to states where a Republican senatorial candidate was running, Mr. Daniels said: "We're only here for one purpose." [36]

The DNC admits to coordinating its 1984 soft money drive with Walter Mondale's campaign.[37] According to Tim Finchem, Mondale's finance director:

"Say you have someone willing to give $250,000. . . . He gives $25,000 to federal. . . . He gives $25,000 to a '501c3' for voter registeration, and he gives 10 $20,000 contributions to state parties . . . . [It's] very effective." [38]

Another Democratic fund-raising official, E. William Crotty, says of his party's 1984 soft money effort: "The money never goes directly to Mondale, but it helps indirectly." [39]

One Republican practitioner, Lyn Nofziger, stressed the point that soft money spent for purportedly non-federal purposes frees other money for other uses:

"In a state where it is allowed, you get corporate money and spend it on damn near anything. And if I give fifty thousand dollars in corporate funds in California, that frees the campaign to spend fifty thousand dollars for whatever it wants." [40]

Advertising and voter identificatin activities by the state parties, financed by soft money, also inevitably—and intentionally—aid a party's candidates for federal as well as state office. For example, an official of the California GOP and VIVA '84 said that in 1982

"we raised $9.2 million, and there is no doubt Pete Wilson, the United States Senator . . ., benefited from this. . . . On the weekend before the election, we had 1,875 phones operating. We made some 1.8 million telephone calls." [41]

The transparency of the "state party" rationale is evident in states that have no state-level campaigns, but still have active "party-building" activities whose sole real purpose is to help elect federal candidates. The Republican Party Executive Director in New Jersey said his state's party had a $680,000 budget in 1984, "but he pointed out that no local candidates are running, so all party-building expenditures will help federal candidates, including Reagan." [42]

The Center for Responsive Politics documented an egregious case in the special senatorial election in Washington in 1983.[43] In that election, the Senate race was the only federal election in the state, and there were no statewide non-federal elections. Nine counties held 28 partisan elections for such offices as coroner, assessor, and sheriff. Nonetheless, the DNC contributed $20,000 from its "Non-federal Corporate Account" to the Washington State Democratic Central Committee, and national Republican committees contributed $67,000 in soft money to their state counterparts.

One has to blank, or be extremely gullible, to avoid the conclusion that soft money is in fact contributed and used in connection with, and for the purpose of influencing, federal elections. The fundraisers know it. The contributors know it. The state parties know it. Paul Dietrich, who chaired the RNC's state fund operation in Missouri in 1980 boasted: "The Republican state operation made a mockery of the law." [44] Deitrich added:

"If ninety per cent of the candidates are for state and local office, we can pay for ninety per cent of the ad with corporate contributions—even though the ads are aimed at federal campaigns. So essentially it just wipes out the whole purpose of the F.E.C. The law just describes what you can't do. The T.V. commercials will never be allocated to a federal candidate, or, if so, it will only be a pittance. If you look up a Congressman's report, you won't be able to tell that we had commercials pounding,

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[34] Id.

[35] "GOP Group", supra.

[36] Id.; see "GOP Accused of Exceeding."

[37] "Loophole Lets Parties Raise Millions," supra.

[38] Id.

[39] "Convening Democratics Target Core Donors," Wash. Post (July 12, 1984) at A4.

[40] Drew, "Politics and Money" (Dec. 13) at 64.

[41] "Loophole Lets Parties Raise Millions," supra

[42] Id.

[43] Complaint, *Center for Responsive Politics* v. *Republican National Comm., et al.*, (filed Aug. 27, 1984). The FEC has not, to our knowledge, taken any public action with respect to this complaint.

[44] Drew, "Politics and Money" (Dec., 13) at 64.

pounding into his district. And it is perfectly legal—or within the letter of the law. All the independent PACs do the same thing. Se we have a little dance which we dance around the law in a way that never breaks the letter but breaks the spirit of the law but we don't agree with the law anyway." [45]

*D. Soft money undermines the individual contribution limits and the ban on corporate and union contributions*

In the words of one Washington lobbyists: "Soft money is where rich people can play again." [46] Natinal political fundraisers are again concentrating on contributions from suspect sources—corporations, unions, and large individual contributors. According to one observer,

"[T]he 'new' system of financing congressional and presidential campaigns is starting to bear a startling resemblance to those pre-Watergate days. Corporations again are being pressured to give huge contributions. Special-interest groups and individual fat cats are finding it increasingly easy to avoid limitations on campaign contributions." [47]

John White, the former Chairman of the Democratic Party, reached a similar conclusion:

"There is more money, there may even be more abuses of money, than there was before." [48]

The DNC's executive director, Michael Steed, captured the spirit of the DNC's soft money fundraising effort this way:

"We are going after individuals, corporations and labor . . . . It's major donors, people who can write big checks."

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"We tell our people [fund-raisers] that no one can max out, because once you've maxed out federally, you can switch to non-federal [soft-money]." [49]

Steed stated that unions had been giving about $2.5 million and corporations about $2 million per year to the DNC in soft money.[50] In 1984, the DNC and Mondale campaign said they expected to raise millions of dollars from corporations, unions, and large individual contributors.[51]

State campaign finance records reflect large individual contributions of the type that led to passage of the FECA in 1974. Mark Dayton, Stuart Moldaw, and Thomas Watson each contributed $100,000 in soft money, apparently through the DNC.[52] Also listed were one $75,000 contribution, three $50,000 contributions, two $40,000 contributions, one $35,000 contribution, one $32,000 contribution and eight $25,000 contributions, all from individuals.[53] State records also reflected numerous contributions from such corporations as Archer-Daniels-Midland, Burlington Northern, New England Life, Philip Morris, Fluor, Pepsico, Kidder Peabody, Hughes Aircraft, and others.[54] The Republican side of the ledger reflects individuals contributions of $45,500, $30,000 and $20,000, and numerous corporate contributions including $40,000 from Atlantic Richfield, $30,000 from BankAmerica, and $20,000 each from Shearon American Express, Getty Oil, and Occidental Petroleum.[55]

*E. Soft money undermines the FECA disclosure provisions*

Soft money practices are also undermining the FECA's disclosure provisions. National party officials are secretly raising very substantial sums of money and channeling that money to the state level. According to one commentator,

"While it seems to be getting easier and easier to make unlimited political contributions, it's getting harder and harder for anyone to find out who is financing federal campaigns. Half a million pages of disclosure documents will be filed by candidates, parties and committees this year at the Federal Election Commission. But much of the money flowing into national politics these days moves through underground channels that aren't reflected on those forms." [56]

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[45] Id. At 101.

[46] Id. at 64.

[47] "Loopholes Allow Flood," supra, at 1.

[48] Id.; see Drew, "Politics and Money" (Dec. 13) at 64.

[49] "Loophole Lets Parties Raise Millions," supra.

[50] Id. Another report stated that, in 1983, the Democratic Party raised $729,000 for state accounts from labor unions and $1.3 million from corporations. "Loopholes Allow Flood," supra, 16.

[51] " 'Soft Money' Will Finance," supra; "Democrats' Split Delays Opening of Fund Drive," Wash. Post (Aug. 16, 1984) at A4; "Republicans and Democrats Battling," supra, at 1621.

[52] See VI PACs and Lobbies No. 2 at 2 (Jan. 16, 1985); " 'Soft Money' Givers," supra.

[53] VI PACs and Lobbies No. 2 at 3.

[54] Id.

[55] Id. at 4; see Drew, "Politics and Money" (Dec. 13) at 71 (discussion of large individual soft-money contributors to Reagan's 1980 campaign).

A primary purpose of the federal campaign finance laws is to open the political financing process to public scrutiny. If the Commission leaves soft money practices unchecked, it will allow the national campaigns and political parties to hide millions of dollars in federally related campaign funds from public view. Hidden from public scrutiny, the flow of soft money affords extraordinary opportunities for corruption.

### *F. Soft money undermines the Fund Act*

Soft money returns private funds to a potentially prominent role in publicly financed presidential campaigns. As an example, Vice Presidential candidate Geraldine Ferraro's fundraising literature stated:

"Although presidential campaigns are publicly funded, a critical advantage will go to the side whose party committees can raise a larger war chest for media campaigns, voter registration drives, and get-out-the-vote efforts." [57]

In the same vein, John Sears, who for a time managed President Reagan's 1980 campaign, said:

"Quite clearly, the Party can do all kinds of things that are of benefit to the Presidential candidate and that are counted as Party functions for the ticket at large—such as polling, fund-raising, running phone banks. People are getting more sophisticated about writing off spending to those activities. So there are all sorts of ways of getting around the limits of what a Presidential candidate can spend." [58]

Soft money subverts the purpose of the Fund Act—to make public financing an optional substitute for private fundraising. In the 1979 Amendments Congress did not intend to authorize the centralized national fundraising of private funds from proscribed sources to supplement public financing. But if the Commission leaves soft money practices unchecked, that will occur.

## IV. THE CURRENT REGULATIONS AND THEIR INADEQUACY

The FEC allows national as well as state and local party committees and other political committees to establish separate federal and non-federal accounts.[59] The committee may deposit into the federal account only funds subject to the FECA's restrictions and must make all disbursements that are "in connection with" a federal election from this account.[60] Soft money, on the other hand, is deposited into the non-federal account and, in theory, spent only in connection with non-federal elections. Neither its receipt nor its expenditure is reported to the FEC.

The FEC also permits registered political committees, including state and local parties, to "allocate" certain expenditures between their federal account and their "non-federal" account. The effect of allocation is to allow a portion of such expenditures to be paid for by sources that are barred from involvement in federal elections. As explained below, the Commission's current regulatory approach permits allocation in circumstances where it was not intended by Congress and undermines the purposes of the federal campaign finance laws.

FEC regulations, following the FECA, define "contribution" and "expenditure" to exclude payments by state and local party committees: (1) for certain grass-roots campaign materials used in connection with volunteer activities,[61] and (2) for registration and get-out-the-vote activities conducted on behalf of the party's Presidential ticket.[62] The FECA states quite clearly that these exemptions apply only if "such payments are made from contributions subject to the limitations and prohibitions of this Act . . . ." [63] The legislative history of the 1979 Amendments reflects that Congress contemplated federal/non-federal allocation of expenditures for grass-roots campaign materials used by volunteers, but did not intend to permit state and local parties to allocate any voter registration or get-out-the-vote expenditures between federal and non-federal accounts.[64]

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[56] See "Loopholes Allow Flood," supra, at 16.

[57] Undated Letter from Geraldine A. Ferraro to "Dear Friend" (soliciting contributions to 1984 Democratic Victory Fund). The response form states, "Count on me! I want to help you and Fritz Mondale defeat Reagan/Bush and the Republican Party.

[58] Drew, "Politics and Money" (Dec. 13) at 67.

[59] 11 C.F.R. § 102.5(a).

[60] Id. § 102.5(a)(1)(i).

[61] *Id.* §§ 100.7(b)(15), 100.8(b)(16); see also id. §§ 100.7(b)(9), 100.8(b)(10) exclusion of payments for preparing, displaying, or distributing slate cards or sample ballots).

[62] *Id.* §§ 100.7(b)(17), 100.8(b)(18). If reference is made in the course of such activities to a candidate seeking election to Congress, the portion of the cost of such activities allocable to that candidate will constitute a "contribution" to or an "expenditure" on behalf of that person unless reference is "incidental to the overall activity." *Id.* § 106.1(c)(3).

[63] 2 U.S.C. §§ 431(8)(B)(x)(2), 431(8)(B)(xii)(2), 431(9)(B)(viii)(2), 431(9)(B)(ix)(2).

In spite of the statutory language and legislative intent, the Commission's existing regulations permit state and local parties to allocate between federal and non-federal accounts for voter registration and get-out-the-vote expenditures.[65] The FEC regulations thus allow state and local party committees to use money that is *not* "subject to the limitations and prohibitions of this Act" on voter registration and get-out-the-vote activities, if the party allocates the costs of such activities and materials between federal and non-federal candidates.

The FEC's regulations do not specify one authoritative formula for allocating expenditures between federal and non-federal accounts. FEC advisory opinions note three methods of allocating expenditures for get-out-the-vote between federal and state activities, including the use of (1) the proportions of party funds spent for or contributed to federal and non-federal candidates; (2) the ratio of statewide to federal offices on the ballot; and (3) the ratio of total funds received by the party's federal campaign committee to the total of all receipts (with certain exclusions) by the party organization.[66] Each of these distinct formulas will yield a significantly different result.

The separate account and alloction regulations are premised on the notion that it is possible realistically to distinguish between purely federal and purely non-federal uses of money. As the preceding section demonstrates, that premise is a fiction as to party spending on voter registration and get-out-the-vote activities, as well as on certain forms of party advertising. The federal and non-federal effects of such expenditures are inextricable; every penny affects federal elections. None of the Commission's allocation formulas realistically reflects this inescapable fact.

In sum, the FEC's regulations are not designed to and do not curb soft money abuses. Indeed, the FEC's regulatory approach to date has probably fostered the growth of soft money practices, contrary to the intent of Congress.

## V. COMMON CAUSE'S PROPOSED REGULATIONS

Congress vested the Commission with extensive rulemaking power "to carry out the provisions of" the FECA.[67] Because the Commission has " 'primary and substantial responsibility for administering . . . the [FECA]' ",[68] the Commission possesses the authority—and has a corresponding responsibility—to ensure that the policies underlying the FECA are not undermined and that FECA is not rendered unenforceable. As it has regulated in the past to "protect the integrity of" other provisions of the election laws,[69] the Commission should now adopt regulations to curb soft money abuses as follows:

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[64] Compare H.R. Rep. No. 96–422, 96th Cong., 1st Sess. 9 (1979) (volunteer campaign materials) *with id.* at 10 (registration and get-out-the-vote). The legislative history regarding volunteer campaign materials, however, appears to conflict with the plain meaning of the statutory language, which requires all such expenditures to be from contributions subject to the limitations and prohibitions of the FECA. See *Tennessee Valley Authority* v. *Hill,* 437 U.S. 153, 184 n. 29 (1978) ("When confronted with a statute which is plain and unambiguous on its face, we ordinarily do not look to legislative history as a guide to its meaning."); *Ex parte Collett,* 337 U.S. 55, 61 (1949); *Packard Motor Car Co.* v. *NLRB,* 330 U.S. 485, 492 (1947).

[65] Under the regulations, such payments are exempt if "the *portion* of the costs of such activities allocable to Federal candidates is paid from contributions subject to the limitations and prohibitions of the Act." 11 C.F.R. §§ 100.7(b)(17)(ii), 100.8(b)(18)(ii) (emphasis added). As discussed below, see pp. 42–44 infra, the Commission previously prohibited allocation of voter registration and get-out-the-vote expenditures and adopted its present approach only in 1978.

[66] See FEC Advisory Op. 1978–46; FEC Advisory Op. 1978–10 (dissenting opinion). In FEC Advisory Op. 1982–5, discussing the allocation of expenses for a national political party conference, the Commission approved several alternative bases for making such an allocation. But the Commission noted that the four alternatives it described "are not exhaustive of those [methods of allocation] that may be reasonable."

[67] 2 U.S.C. §§ 437d(a)(8), 438(a)(9); see *Buckley* v. *Valeo,* 424 U.S. at 110.

[68] *FEC* v. *Democratic Senatorial Campaign Comm. (DSCC),* 454 U.S. 27, 37 (1981) (quoting *Buckley* v. *Valeo,* 424 U.S. at 109).

[69] Explanation and Justification of Revised Regulations Governing Suspension of Payments from the Presidential Primary Matching Fund, Fed. Elec. Camp. Fin. Guide ¶ 9116 (CCH); 48 Fed. Reg. 5235 (1983); see 11 C.F.R. § 9033.9. In enacting these regulations, the Commission concluded that although the statute did not specifically authorize it to suspend payments to candidates who exceeded expenditure limits, it had the authority to monitor eligibility as a necessary corollary to its express authority to determine initial eligibility. The Commission stressed that

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First, reporting requirements that will deter illegal fundraising, facilitate detection and enforcement by the Commission, and inform the general public of the full scope of soft money in political campaigns; and

Second, regulations that specify the circumstances under which it is illegal to receive or spend soft money because of its relationship to federal elections.

### *A. Reporting requirements*

Contributions of soft money—which may will amount to tens of millions of dollars a year—are not reported to the Commission. The public lacks an accurate, systematic source of information about the sources and amounts of soft money, and the Commission is deprived of a crucial enforcement tool that would enable it effectively to investigate illegal contributions and expenditures of soft money. The first step toward curbing the proliferating abuse of soft money is for the Commission to amend the reporting requirements of the FECA regulations to encompass all contributions of soft money to political party committees at all levels. Such disclosure requirements are necessary "to carry out the provisions of" the FECA and are, therefore, within the Commission's broad rulemaking authority. Previous Commission actions demonstrate that the Commission has authority to require some disclosure by otherwise non-reporting entities in order to ensure enforcement of the FECA.

For example, 11 C.F.R. § 102.5(b)(1) addresses organizations that are not "political committees" and therefore are not subject to FECA's reporting requirements, but that spend money in connection with both federal and non-federal elections. It nonetheless requires such organizations to keep records of deposits to and disbursements from certain of their accounts, and to make such records avaiable for Commission examination.[70] The Commission noted that this requirement is necessary to "demonstrate compliance" with provisions that restrict federally-related spending to funds subject to the prohibitions and limitations of the FECA.[71]

Similarly, collecting agents—organizations or committees that collect and transmit contributions to separate but related segregated funds—are exempt from the registration and reporting requirements of the FECA, provided that they do not engage in certain other activities.[72] Yet these groups too must retain all their documentation of contributions, deposits, and transmittals for three years, and must make these available to the FEC upon request.[73] In addition, donations to national or state party committees to defray the cost of constructing or purchasing office facilities are exempt from the definition of "contribution" under the Act,[74] but must be reported to the Commission.[75] As these illustrations demonstrate, the Commission has the authority to require disclosure to ensure compliance with the substantive provisions of the FECA, and it has previously exercised that authority.

#### *1. National party and congressional campaign committees*

The FECA defines political party as an association, committee, or organization "which nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of such association, committee, or organization."[76] By their nature and purposes, such committees' activities at the national level are inherently connected with federal elections. Accordingly, the Commission should not permit national party committees and congressional campaign committees to establish "non-federal" accounts that escape the sunshine requirements of the FECA. The potential for abuse is too great.

Therefore the Commission should amend 11 C.F.R. § 102.5 to forbid the establishment of non-reporting "non-federal" accounts by national-level party committees and congressional campaign committees. The first sentence of § 102.5(a)(1) should be amended to refer to "[e]ach organization, including a state or local party commit-

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"without the authority to suspend payments to a candidate who is violating the conditions of eligibility, the Commission would be unable to protect the integrity of the public financing system." 48 Fed. Reg. at 5235.

[70] 11 C.F.R. § 102.5(b)(1)(i) and (ii).

[71] 45 Fed. Reg. 15080, 15083 (1980); Fed. Elec. Campaign Financing Guide (CCH) ¶ 796. Under the regulation, the organization may either establish a separate federal account with funds subject to the prohibitions and limitations of the FECA or demonstrate through accounting methods that federal contributions were covered by funds from federally-permissible sources.

[72] 11 C.F.R. § 102.6(b)(1) and (2).

[73] Id. § 102.6(b)(6).

[74] 2 U.S.C. § 431(8)(B)(viii).

[75] 11 C.F.R. § 104.3(g) (funds to be reported as a memo entry on Schedule A).

[76] 2 U.S.C. § 431(16) (emphasis added.) Because of the inherent links between parties and their candidates, the Commission has recognized in its regulations that party committees are incapable of making truly independent expenditures on such candidates' behalf. 11 C.F.R. § 110.7(B)(4); see *FEC* v. *DSCC*, 454 U.S. at 28-29 n.1.

tee," in order to exclude nationwide committees. Furthermore, a new section, 11 C.F.R. § 102.5(c), should provide:

"Notwithstanding the other provisions of this section, every organization, committee, or account established or administered for any purpose by a national political party, or by a congressional campaign committee of a political party (except an organization, committee, or account whose exclusive purpose is to receive and administer receipts described in 2 U.S.C. § 431(8)(A)(viii)), shall constitute a federal political committee which shall comply with the requirements of the Act including the registration, accounting, recordkeeping, and reporting provisions of 11 C.F.R. Parts 102 and 104.

These amendments would subject all receipts and disbursements by national party committees and congressional campaign committees, except those expressly exempted by § 431(8)(A)(viii), to the full requirements of the FECA.

### *2. "Non-Federal" accounts of registered committees*

Unlike the national party committees discussed above, the "non-federal" accounts of state and local party committees and other registered political committees[77] do finance some political activity that is not connected with federal elections. Congress did not intend to restrict the sources of funds such non-federal accounts could lawfully receive to finance purely non-federal activity. However, the Commission should require disclosure of the receipt of soft money by such entities nonetheless. This would enable the Commission to detect and police circumvention of the restrictions Congress imposed on the funding of federally-related political activity.

To accomplish this objective, the Commission should amend 11 C.F.R. § 102.5 by adding a new section, § 102.5(a)(3), as follows:

"(i) Any account established, maintained, or administered by a political committee (as defined in 2 U.S.C. § 431(4)) for the purpose of financing activity in connection with non-federal elections, including any account established, maintained, or administered by a state or local party committee (except an account whose exclusive purpose is to receive transfers described in § 431(8)(a)(viii)), shall submit reports to the Commission at the times when such committee submits reports to the Commission under 2 U.S.C. § 434(b). Each report shall identify all amounts received by the account from any of the following sources: (a) national banks, (b) corporations, (c) labor organizations, and (d) individuals or committees that have already made contributions either to the recipient committee or in the aggregate in an amount equal to the contribution limits under 2 U.S.C. § 441a(a). Such reports shall identify the source, date, and amount of each such receipt, providing for each source a current address and the aggregate year-to-date total of receipts from such source. They shall also include the total amount of such receipts for the reporting period and the calendar year.

"(ii) Each account described in subsection (i) shall retain all records of the receipts described in subsection (i) and shall make these records available to the Commission on request."

These soft money reporting requirements are essential for effective enforcement of the federal statutes prohibiting the use of funds from certain sources in connection with federal elections. They are narrowly tailored to meet a specific need—the need to detect, deter, and punish abuses of the campaign finance laws by the givers and recipients of soft money.

## *B. Defining federally connected giving and spending*

In addition to establishing reporting requirements that would bring soft money out into the daylight, the Commission should adopt a regulation to define the circumstances in which soft money contributions and expenditures are illegal because they have the requisite federal nexus. 2 U.S.C. § 441b prohibits contributions and expenditures by national banks, corporations, and labor organizations "in connection with" federal elections, and § 441a(a) establishes dollar limits on "contributions," which are defined as gifts or loans made "for the purpose of influencing any election for federal office." By spelling out the contours of giving and spending "in connection with" or "for the purpose of influencing" a federal election, the Commission can effectuate Congressional intent and deter involvement in federal elections by sources of funds that Congress chose to prohibit or limit.

### *1. Contributions*

The giving of soft money by corporations, unions, individuals and committees to ostensible "non-federal" recipients has become a means for seeking improper federal influence. When soft money is given to any account established or sponsored by a national-level party committee, a federal candidate, or a federal officeholder, or when it is channeled by national-level political figures to the state or local level, this activity occurs in connection with a federal election,[78] and for the purpose of influencing its outcome.[79] The donor knows that, even if his contribution does not go into the bank account of a national party committee or a campaign for federal office, it will be duly noted by national political or governmental figures who may have influence over government decisions or access to federal policymakers. Moreover, these soft money contributions reduce the need for fund transfers from the national parties themselves.[80] Hence, soft money opens the door for precisely the sort of influence-peddling and quid pro quo that Congress had in mind when it prohibited corporate, union, and excessive individual contributions to federal candidates and to political committees directly participating in federal campaigns.

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[77] These accounts are authorized by 11 C.F.R. § 102.5(a)(1).

The channeling of soft money at the national level to state and local committees deprives such contributions of any state or local character. This conclusion is no different from the conclusion Congress and the Commission reached with respect to another activity permitted by the 1979 Amendments. The legislative history makes clear that grass-roots campaign materials purchased by the national committee of a political party and delivered to a state or local party committee for use by volunteers would not come within the 1979 exemption.[81] The Commission's regulations expressly disqualify the use of campaign materials paid for the national party committee, or payment for voter registration and get-out-the-vote activities from funds donated to the state or local committee by the national committee.[82] The analogy to soft money that is solicited by national party or government personnel and then "delivered" to a state or local party committee or other registered political committee is direct.[83]

The ban we propose on nationally-channeled soft money is necessary to prevent the danger of national-level corruption addressed by the FECA. At the same time, our proposal does not affect channeling at the national level of funds from federally-permissible sources; and compliance by state and local level committees would be no more difficult than compliance with the limits on "coordinated expenditures." [84]

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[78] The words "in connection with" a federal election originally were broadly construed by the Commission in cases involving spending by corporate and union entities, see, e.g., FEC Advisory Op. 1978-46 (contribution to state party convention was "in connection with" federal election convention provided federal candidates with forum for soliciting or accepting contributions or offered opportunity to advocate election or defeat of identified federal candidates). In recent years, the Commission has read this provision more strictly. See, e.g., FEC Advisory Op. 1980-20. See generally 1 R. Bauer & D. Kafka, U.S. Fed. Elec. Law, ch. 9, at 42-46. The corporate and union context, however, is distinguishable from that of national, state, and local party committees, whose primary purpose is to nominate and seek election of their candidates.

[79] For the most part, the Commission has construed the "purpose of influencing" requirement broadly when it involves donations to political committees. See generally 1 R. Bauer & D. Kafka, supra, ch. 1, at 15-16. For example, funds solicited by a PAC to defray its office expenses were held to be contributions "for the purpose of influencing" a federal election. FEC Advisory Op. 1978-78. See also 11 C.F.R. § 110.8(e)(1). This section provides that reimbursement by a political party to a candidate for expenses is not a "contribution" only if the expenses were related solely to "party building activities," and creates the rebuttable presumptions that: (1) any activity taking place after January 1st of the year in which the candidate is up for election is not solely for "party building" but is "for the purpose of influencing the candidate's election"; id. § 110.8(e)(2)(ii); and (2) an activity occurring before this date is "party related." Id. § 110.8(e)(2)(i).

But see, e.g., FEC Advisory Op. 1982-5 (noting, without deciding, that FECA might not apply to workshop and skills training conference held by the DNC because "it does not appear that the conference is being held for the purpose of influencing, or in connection with, the specific election of any clearly identified candidate for Federal office"). In that case, the issue was whether the expenditures could be linked to any specific election campaign at all. Here, however, contributions of soft money for purposes such as voter registration and get-out-the-vote activities have undisputably been made "in connection with" or "for the purpose of influencing" an election—the question is simply to which election (or elections) the expenditure or contribution should be attributed.

[80] Cf. FEC Informational Letter, Fed. Elec. Camp. Fin. Guide (CCH) ¶ 6032 (payments from family member to candidate for living expenses constituted "contributions" because, inter alia, "the receipt of the funds might allow [the candidate] to use more of [his] personal assets for campaign expenditures").

[81] H.R. Rep. No. 96-422, 96th Cong., 1st Sess. 9 (1979).

[82] 11 C.F.R. §§ 100.7(15)(vii), 100.7(17)(vii).

[83] Cf. 11 C.F.R. § 110.6(d)(2) (if conduit or intermediary for earmarked contributions exercises any direction or control over the donor's choice of the recipient candidate, the contribution is attributed to both the original donor and the conduit).

[84] See 11 C.F.R. § 109.

The Commission should, therefore, adopt the following regulation: [85]

*"11 C.F.R. § 100.7(a)(1)(iv): "Contribution"*

"For purposes of 11 C.F.R. § 100.7(a)(1), any gift, subscription, loan, advance, or deposit of money or anything of value is made 'for the purpose of influencing any election for Federal office' (with the exception of transfers covered by 2 U.S.C. § 431(8)(B)(viii)):

"(i) if it is given to any national party committee, congressional campaign committee, multicandidate committee established or sponsored by a federal officeholder or candidate for federal office, or any organization, committee, or account (other than a state or local party committee) established or administered by such a committee; or

"(ii) if it is given to any state or local party committee, any other registered political committee, or any organization, committee, or account established or administered by any such committee, as a result of coordination with (including any specific advice, suggestion, recommendation, or solicitation from) any of the following persons: (a) any official, employee, or other person affiliated with a national political party committee or a congressional campaign committee; (b) any candidate for President or Vice President, before or after the party's national nominating convention, or any person affiliated with the authorized campaign committee of such a candidate; (c) any person affiliated with a multicandidate committee established or sponsored by a federal officeholder or candidate for federal office; (d) any employee in the Executive Office of the President; or (e) any member of the United States Senate or House of Representatives other than a member for the state or locality in which the state or local party committee is situated, or any person employed by such a Senator or Representative or by his or her authorized campaign committee."

### *2. Expenditures*

Soft money also improperly influences federal elections by being spent in ways that are inextricably intertwined with federal campaigns. As noted above, all expenditures by a national party committee are inseparably linked to the campaigns of that party's nominees for federal office.[86] Party spending for voter registration and get-out-the-vote activities in federal election years has an inescapable—and intentional—effect on the party's federal as well as non-federal candidates. Similarly, when a national, state or local party's advertisements promote the party's entire slate of candidates, or chastise the opposing party, the influence on federal campaigns cannot be isolated from the effect on state and local campaigns. The entire amount of any expenditure for these purposes is connected with federal elections.

The Commission's current approach, an artificial allocation method that attempts to establish a federal share of such expenditures, is indefensible in theory and inconsistent with the statutory language. Congress provided in 2 U.S.C. § 431(9) that a disbursement is an "expenditure" covered by the Act if it is "for the purpose of influencing any election for Federal office." It also specified that state and local parties could pay for voter registration and get-out-the-vote activity only from "contributions subject to the limitations and prohibitions of this Act." [87] As demonstrated above, the legislative history shows that Congress did not intend any allocation of such state or local party expenditures between federal and non-federal accounts. Allocation was discussed with reference to state and local party expenditures for other purposes, but not for voter registration and get-out-the-vote.[88]

The FEC's 1976 decisions on the use of corporate money to fund get-out-the-vote activity demonstrate that the Commission once did recognize the intent of Congress as well as the practical realities of politics. In re A.O.R. 1976-72 [89] and In re A.O.R.

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[85] Analogous language should be added to 11 C.F.R. § 114.1(a)(1)(A), which defines "contribution" and "expenditure" in the context of corporate and labor union activity.

[86] When a national political party provides financial support for voter registration or get-out-the-vote activities, it would defy common sense to describe such activity as "non-partisan activity designed to encourage individuals to vote or to register to vote," which is excluded by 2 U.S.C. § 431(9)(A)(ii) from the definition of "expenditure." To the extent that FEC Advisory Op. 1982-5 may be read to suggest the contrary, we respecfully suggest that it be reconsidered.

[87] 2 U.S.C. §§ 431(8)(B)(x)(2), 431(8)(B)(xii)(2), 431(9)(B)(viii)(2), and 431(9)(B)(ix)(2).

[88] "[W]here Congress includes particular language in one section . . . but omits it in another . . ., [it should be presumed that] . . . Congress act[ed] intentionally and purposely in the disparate inclusion or exclusion." *United States* v. *Martino,* 681 F. 2d 952, 954 (5th Cir. 1982), (quoting *United States* v. *Wong Kim Bo,* 472 F.2d 720, 722 (5th Cir. 1972)).

[89] Fed. Elec. Camp. Fin. Guide (CCH) ¶ 6034.

1976–83 [90] flatly proscribed the use of corporate or union general treasury funds to fund any portion of a registration or get-out-the-vote drive conducted by a state or local political party. These decisions make it clear that the Commission has authority to abolish the current allocation rules.[91]

In 1978, however, without any elaboration or explanation, the Commission underwent a turnabout. It autorized the allocation of expenditures for registration and get-out-the-vote drives between federal and "non-federal" elections, and thus lifted its blanket prohibition on the use of soft money in connection with such activities.[92] This shift in policy met with vehement opposition in a series of well-reasoned dissenting opinions by Commissioner Harris,[93] who concluded that the use of corporate funds for such activities violated the provisions of the FECA,[94] and admonished that:

"Not only do such contributions free individual contributions for Federal campaigns, but get-out-the-vote drives directly impact on Federal elections in those states which have simultaneous Federal and state elections, as nearly all do. . . . Corporate contributions for get-out-the-vote drives are not sanctioned either by the statute or by Commission regulations." [95]

Recent events prove the merit of these dissents. The Commission should, therefore, exercise its discretion to return to its previous approach—forbidding an artificial allocation of voter registration and get-out-the-vote expenditures. It should also prohibit allocation of expenditures for media and direct mail advertising for the party's entire candidate slate. By abolishing allocation in these two areas, but continuing to permit its use for buttons, bumper stickers, slate cards, and similar grass-roots material, the Commission will best serve the purposes uderlying the 1979 statute. On the one hand, Congress wished to foster active grass-roots participation through state and local party organizations. On the other hand, Congress neither wished to undermine the basic prohibitions and limitations of the FECA nor to permit unlimited expenditures for the mass media.[96]

To avoid abuse of the allocation process in connection with volunteer campaign materials featuring federal as well as state and local campaigns, the Commission should establish strict allocation rules. Campaign officials are currently devoting considerable ingenuity to devising cynical methods to minimize the "federal share" and maximize the amount that can be allocated to state and local soft money accounts. The Commission's rules should recognize the intrinsic importance and visibility of federal elections. At least 50 percent of the cost of such materials should be allocated to the federal account; if a higher proportion of the material is devoted to federal candidates, then that higher percentage should be allocated to the federal account (which is subject to the limitations and prohibitions of the FECA).

Common Cause urges the Commission to adopt the following regulations:

*"11 C.F.R. § 100.8(a)(1)(v): 'Expenditure'*

"For purposes of 11 C.F.R. § 100.8(a)(1), any disbursement made by any national party committee or congressional campaign committee, or by any organization, committee, or account established or administered by any such committee (with the exception of transfers described in 2 U.S.C. § 431(8)(B)(viii)) is made 'for the purpose of influencing any election for Federal office.'

*"11 C.F.R. § 100.7(b)(17)(ii); 11 C.F.R. § 100.8(b)(18)(ii): Voter Registration and Get-out-the-Vote Activities*

"In any calendar year during which Federal elections are being held in a party committee's state or locality, the entire cost of such activities must be paid from contributions subject to the limitations and prohibitions of the Act.[97]

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[90] Fed. Elec. Camp. Fin. Guide (CCH) ¶ 6036.

[91] Although the 1976 policy was adopted prior to the passage of the 1979 amendments, those amendments did not contemplate the adoption of an allocation rule for voter registration and get-out-the-vote activity. *See* pp. 25–26 *Supra*.

[92] FEC Advisory Op. 1978–10.

[93] *See , e.g.*, FEC Advisory Op. 1978–46 (dissenting opinion), FEC Advisory Op. 1978–10 (dissenting opinion).

[94] FEC Advisory Op. 1978–10 (dissenting opinion).

[95] FEC Advisory Op. 1982–5 (dissenting opinion).

[96] Each of the state and local party exemptions established in 1979 expressly excludes media advertisements. 2 U.S.C. §§ 431(8)(B)(v), 431(8)(B)(x)(1), 431(8)(B)(xi), 431(8)(B)(xii), 431(9)(B)(iv), 431(9)(B)(viii)(1), 431(9)(B)(ix)(1).

[97] 11 C.F.R. § 100.7(17)(iv) should be repealed.

*"11 C.F.R. § 100.8(a)(1)(vi): 'Expenditure'*

"For purposes of 11 C.F.R. § 100.8(a)(1), any disbursement made by any state or local party committee, or by any organization, committee, or account established or maintained by any such committee, is made 'for the purpose of influencing any election for Federal office' if it is made for any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising, which:

"(i) discusses any clearly identified candidate for Federal office, even if the communication also discusses state or local candidates; or

"(ii) urges votes or other forms of support for the party's candidates generally, during a calendar year in which federal elections are being held in the state or locality.

*"11 C.F.R. § 106.1(e): Allocation of Expenditures*

"(a) A state or local committee of a political party must pay for any activity described in 11 C.F.R. §§ 100.7(b)(17) and 100.8(b)(18) from contributions subject to the limitations and prohibitions of the Act.

"(b) A state or local committee of a political party may allocate the costs of any campaign materials described in 11 C.F.R. §§ 100.7(b)(15) and 100.8(b)(16) between federal and non-federal accounts, if such materials relate to both federal and non-federal candidates. At least 50 percent of the costs of each such set of materials shall be allocated to federal candidates and paid with funds from the federal account. In any case in which more then half of a set of such materials relates to federal candidates, then the applicable higher percentage of the costs shall be allocated to federal candidates."

## VI. CONCLUSION

For the foregoing reasons, we respectfully urge the Commission to adopt the proposed regulations to deal with the very serious problems created by the receipt, channeling, and use of soft money in ways that undermine the FECA.

# APPENDIX 13D

## STATEMENT OF COMMON CAUSE PRESIDENT FRED WERTHEIMER AT THE FEDERAL ELECTION COMMISSION HEARING ON SOFT MONEY REGULATIONS

I appreciate the opportunity to appear today on behalf of Common Cause to discuss the problems that so-called "soft money" practices are causing with regard to federal elections and the need for quick action by the Commission to deal with these problems. I am accompanied by Roger Witten and Carol Lee of the law firm of Wilmer, Cutler & Pickering who serve as counsel for Common Cause and who have worked on this matter with us.

I want to say at the outset that we believe "soft money" practices constitute the most serious problem facing the nation's presidential campaign finance system. Since public financing of presidential elections began in 1976, thirty-four of the thirty-five major party presidential candidates have chosen to use the system. The Commission on National Elections, headed by Melvin Laird and Robert Strauss, recently concluded: "Public financing of presidential elections has clearly proved its worth in opening up the process, reducing undue influence of individuals and groups, and virtually ending corruption in presidential election finance. This major reform of the 1970s should be continued."

If presidential public financing has virtually ended corruption in presidential elections, however, "soft money" practices stand to reintroduce corruption into our single most important election. And they stand to do so, we believe, in direct violation of existing federal statutes.

The Federal Election Commission was created to oversee, implement and enforce our federal elections laws. Ultimately, the agency's most important statutory responsibility is to protect the integrity of these laws. That is precisely what is at stake here. "Soft money" practices directly threaten the integrity of our campaign finance laws. The Commission has the authority and the institutional responsibility to deal with this threat. Congressional action is not necessary to resolve this matter. The problem is clearly within the power of the Commission to resolve and to do so in time for the 1988 presidential campaign or, alternatively, to ignore the problem and set the stage for the undermining of our entire system of campaign finance laws.

In examining "soft money" practices there are two central factors to keep in mind. On the one hand, there are candidate and party campaign officials actively involved in federal elections who are soliciting campaign money barred from use in federal elections in order to have these funds spent to benefit federal candidates. On the other hand, there are corporations, labor unions, and individual large givers who are providing campaign money that they are barred from giving under federal law for the purpose of having these funds benefit federal candidates.

State parties are involved in this process as the conduits or vehicles by which this dangerous and destructive game is played out.

For those who might question whether such practices are really occurring, we suggest they take a look at the words of the practitioners themselves. For example, Tim Finchem, Walter Mondale's finance director for the 1984 presidential campaign, whose basic interest was the election of Walter Mondale, said,

"Say you have someone willing to give $250,000. . . . He gives $25,000 to federal . . . He gives $25.000 to a '501c(3) for voter registration, and gives 10 $20,000 contributions to state parties. . . . [It's] very effective."

Mitchell Daniels, former Director of the National Republican Senatorial Committee, in an interview with the Washington Post, described his group's strategy as keyed directly to federal elections. Explaining why all of the nearly $1 million the NRSC transferred to state parties went to states where a Republican senatorial candidate was running, Mr. Daniels said, "We're only here for one purpose."

The Republican Party Executive Director in New Jersey told the Washington Post that his state party had $680,000 in 1984 even though "no local candidates [were] running, so all party-building expenditures will help federal candidates, including Reagan."

Paul Dietrich, the Chair of the Republican National Committee's state fund operation in Missouri in 1980, boasted: "The Republican state operation made a mockery of the law." He added,

"If ninety percent of the candidates are for state and local office, we can pay for ninety percent of the ad with corporate contributions—even though the ads are aimed at federal campaigns. So essentially it just wipes out the whole purpose of the FEC."

Former Executive Director of the Democratic National Committee Michael Steed told the Washington Post that, "We tell our people [fundraisers] that no one can max out, because once you've maxed out federally you can switch to non-federal [soft money]."

Carlos Perez, Chairman of a Florida branch of a national group set up as part of the Republican state party to mobilize Hispanic voters, outlined his goal: "What is at stake is the re-election of President Reagan." The Executive Director of the Florida Republican Party explained that Perez' group "will be chartered as a subcommittee of the state Republican Party so they can use the benefits of the state."

Another example emerged from Ed Zuckerman's (Editor of PACs & Lobbies) examination of a Democratic National Committee account filed in Pennsylvania which included a $100,000 contribution from Minnesotan Mark Dayton. Dayton told the Minneapolis Star & Tribune that "the purpose [of the contribution] was to assist the Mondale campaign."

The Democratic National Committee and the Mondale campaign told the Washington Post that they expected to raise millions of dollars from corporations, unions, and large individual contributions during the 1984 campaign.

The net impact of this is quite clear—campaign funds that are prohibited for federal campaigns are being raised and spent for the purpose of influencing federal elections. These activities are undermining the federal campaign finance law's individual and political committee contribution limits, the limits on political party activity, the ban on corporate and union contributions and the presidential public financing provisions. These provisions exist, furthermore, for the most important of reasons—to prevent the corruption of federal officials and federal decision-making.

The "soft money" activities going on are not only undermining our laws; they are also illegal. The federal laws do not allow funds prohibited for federal elections to be channeled to state political parties for the purpose of influencing federal elections. In fact, Congress has gone out of its way to prevent this from happening.

The 1979 amendment, for example, that provides for unlimited voter registration and get-out-the-vote expenditures by state and local parties on behalf of their Presidential and Vice Presidential nominees is often cited as opening the door to nationally-organized soft money campaigns in presidential elections. But the provision in fact flatly prohibits the use of any funds for these expenditures that are not in compliance with federal contribution limits and prohibitions. Congress obviously wanted to make sure that the provision would not serve as a loophole for funneling prohibited funds into federal elections.

There is no basis in the statute for the artificial allocation process which has been created by the Commission for these state and local party expenditures, the net result of which is to allow corporate funds and labor union dues and large individual contributions to be channeled to state parties and spent by them with the intent of influencing the presidential election. In fact, this allocation approach has set the stage for the restriction in this provision on the use of prohibited funds to be ignored. It simply defies logic to say that voter registration and get-out-the-vote activities are not done "in connection with" federal elections when they occur during a federal election year.

The same problem has risen with regard to the allocation approach the Commission has created concerning the use of corporate and labor union treasury funds for party voter registration and get-out-the-vote drives.

The prohibition on the use of corporate treasury funds in connection with federal elections goes back to the turn of the century. A similar prohibition on the use of labor union treasury funds was added later on.

The present prohibition on the use of corporate or labor union treasury funds for contributions or expenditures in connecton with a federal election is clearly stated in the law. There is no indication of any statutory basis for creating an allocation system to allow these funds to be used in ways that have an impact and are intended to have an impact on federal elections.

The Commission initially reached this conclusion in 1976 when it flatly proscribed the use of corporate or union treasury funds to fund any portion of a registraton or get-out-the-vote drive conducted by a state or local politial party. That decision recognized the fact that any other approach would in fact allow such funds to be used to influence federal elections.

In 1978 the Commission without elaboration reversed its position and authorized the allocation of expenditures by corporations and labor unions for registration and get-out-the-vote drivers between federal and "non-federal" elections. In so doing, it opened the door to intentional efforts to channel these funds through state parties for the purpose of influencing federal elections.

Recent events have only served to demonstrate that the Commission's original position was correct in forbidding artificial allocation by corporations and labor unions of voter registration and get-out-the-vote expenditures.

Similarly, the national parties are inextricably involved with federal elections. Artificial allocations of corporate and labor contributions by the national parties are equally inappropriate and the Commission should make clear that this is not permissible under present law. This of course would not stop the national parties from helping state and local candidates. But it would prohibit them from using funds that have been prohibited in the federal election process for these purposes.

The allocation formulas that have been created are an open invitation to violate the campaign finance laws. And that is what is happening. The public evidence does not in any way suggest a spontaneous interest at the local level by corporations and labor unions and larger givers to fund state and local party-building activities. Instead it clearly suggests nationally organized and directed fundraising schemes intended to benefit federal campaigns, with state and local parties serving as the pawns of this chess game.

With no discernible basis in the campaign finance statutes for the allocation approach that has been created and with clear and mounting evidence that the allocations are being used to undermine statutory goals rather than implement them, it is essential for the Commission to deal with this problem.

We have proposed one approach for the Commission's consideration in order to stop this undermining of critical provisions of the federal campaign finance laws. As you know, we have spelled out this approach in detail in both our submission of January 17, 1986 and our submission of February 4, 1985 when the Commission initially agreed to formally examine this problem.

Our approach is based on the view that national-level party committees and federal campaigns should not be allowed to accept funds prohibited for use in federal campaigns or to channel them to state parties; that state parties should not be allowed to make party-building expenditures (including voter registration, get-out-the-vote and general media advertising campaings) in federal election years with any funds proscribed by federal law; that corporate or labor unions treasury funds should not be allowed to be used by state and local parties in voter registration and get-out-the-vote campaigns that affect federal elections; and that appropriate disclosure should be required by state and local parties to be able to effectively implement these provisions.

If the Commission has a better method to accomplish the goal of preventing "soft money" from being contributed and spent in ways that undermine and violate the existing finance laws, we are all for it. The particular way in which this abuse is brought to a stop is not important. The fact that it is stopped and stopped soon is essential.

In conclusion, the Commission faces a decision of enormous consequence. The intergrity of our campaign finance laws is under direct attack. Those who claim nothing is going on belie reality. Everyone understands that soft money practices are viewed as a way of injecting large sums of otherwise illegal campaign funds into federal elections.

The Commission is at a crossroads. It was created to protect the campaign finance laws and the country from precisely the kind of dangerous abuses we are seeing today in "soft money" practices. The Commission has the power and the responsibility to solve this problem. It is essential that you do so expeditiously.

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